

## DIVORCE IN CHILE<sup>1</sup>

AN EMPIRICAL ANALYSIS SINCE THE ENACTMENT OF THE NEW CIVIL MARRIAGE LAW

RESEARCH PUBLISHED IN "ESTUDIOS PÚBLICOS", N°123, 2011.

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**Abstract:** *This paper is an initial attempt to make an empirical evaluation of what happened in Chile after the 2004 enactment of the new Civil Marriage Act (Law 19,947), which included absolute divorce for the first time in Chilean law. Until that moment, the way that a marriage could formally be ended was by an annulment due to incompetence of the Civil Registry officer, possible only provided there was mutual consent of the spouses and the resources to hire an attorney. The analysis says that although the divorce rate has increased considerably with respect to the annulment rate prior to the law, it is not high in relation to other countries, despite an accumulation of couples that wanted to be divorced at the time the law was enacted. The study concludes that the new Civil Marriage Act has extended and equalized the possibility of a legal dissolution of the bond of marriage. Although no changes are seen in birth rates and the percentage of infants born outside of marriage, marriages have increased, even when controlling for some variables and discounting second marriages. Also, under the new law divorced women and their children would be more protected than women who are merely separated as the former would receive more alimony from their ex-husbands. At the end, some policy measures are discussed.*

**Keywords:** *divorce, marriage, family, alimony.*

**Received:** *June 2011; Accepted:* *August 2011.*

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<sup>1</sup> I fully appreciate the collaboration and comments of Isabel Aninat, Enrique Barros, Hernán Corral, Arturo Fontaine, Felipe González, Ricardo González, M. Teresa Miranda, Francisco Molina Jr., Sol Serrano, Lucas Sierra, Joaquín Trujillo and Eduardo Valenzuela. I also wish to thank the patience of multiple people from different public entities who helped with the difficult task of data pursuit. Above all, I wish to thank Harald Beyer's permanent and acute collaboration. All mistakes within are mine.

*Estudios Públicos*, 123 (Winter, 2011)

Typically, individuals in our society do not divorce because marriage has become unimportant to them, but because it has become so important that they have no tolerance for the less than completely successful marital arrangement they had contracted with the particular individual in question (Peter Berger, "Marriage and the Construction of Reality")

Happy families are all alike, but every unhappy family is unhappy in its own way (Leo Tolstoy, *Ana Karenina*)

## 1. INTRODUCTION AND GOALS

Divorce, as dissolution of the marriage bond, was already incorporated in some ancient cultures legislation, such as the Hammurabi Code and Roman Law. In Western Christian culture, marriage was declared indissoluble in the VIII century, which started to be controlled approximately four centuries after<sup>2</sup>. The sacramental dimension of marriage and, therefore, the prohibition of divorce was ratified by the Council of Trent (1545-1536) in response to the Protestant Reformation, although canonical law contemplated ecclesiastical divorce and annulment under certain conditions<sup>3</sup>.

In the protestant denomination, Lutheranism took a while to agree on divorce, but allowed it on the XVIII century under the conditions of mutual consent and in other concrete situations<sup>4</sup>; Anglicanism, on the other hand, had from its origination particular differences with the Catholic Church on divorce's legitimacy. In the Catholic based countries, the first blow to canonical law came from the French Revolution, which established divorce and incorporated it into the Napoleonic Code<sup>5</sup>, of great influence in many other countries codes.

On the mid XX century the majority of the Western culture allowed divorce. While on Europe the last countries to do so where Italy (1970), Spain (1981) and Ireland (1996)<sup>6</sup>, Latin America came a little late, being Brazil (1977) and Argentina (1987) some of the last countries to admit it. In 2004 Chile became the penultimate Western country to allow absolute divorce, remaining solo the small Island of Malta<sup>7</sup>, which although did not count with divorce had a procedure to annul marriage. On May 28, 2011, the 52,7% of the Maltese approved divorce in national referendum.

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<sup>2</sup> Antoloskaia (2000), p.5.

<sup>3</sup> Separation, whether by bed or by cohabitation, was allowed under determined conditions, though without bond dissolution (Concile of Trent, Session 24, Canon VIII). Also, other mechanisms to dissolve marriages already existed, for example, an interesting practice by which, considering the prohibition of marriage if there was consanguinity up to a high decree, kinships were looked for to null the bond. Ibidem, p. 6.

<sup>4</sup> Crane (1913), p. 70

<sup>5</sup> Book I, Title VI of the 1804's Civil French Code

<sup>6</sup> González y Viitanen (2006), p. 6.

<sup>7</sup> Malta has less than half a million inhabitants.

The history of divorce legislation in Chile is large and controverted. The first draft legislation allowing divorce<sup>8</sup> was presented in 1914 by the lower-house representative Alfredo Frigolett, but was rejected by a great majority. From then on until the first years of the 1970's there were several new attempts<sup>9</sup>, but none accomplished whatsoever to overcome paperwork at the Chamber of Origin<sup>10</sup>. During Pinochet's dictatorship the topic was not discussed, and it was until the return to democracy, in 1995, that a group of parliament members took the initiative, having it approved by the Chamber of Deputies in 1997. Only on May 7, 2004 the New Civil Marriage Law (Law No. 19,947) was enacted, which, among other things, incorporated divorce to the Chilean legislation. This law, commonly addressed as the "Divorce Law", is valid since November 18 of that same year.

Although Chile did not count with legal divorce until the XXI century, since 1923 there was another option to dissolve the marriage bond: nullity for territorial incompetence of the Civil Registry clerk<sup>11</sup>. In other words, if the declared address of at least one of the contracting parties would not correspond to the circumscription of the officer who married them, then the marriage would be legally null for the clerk was not enabled to marry them. So, that way it would only take to get a pair of witnesses to declare that one of the spouses did not live in the registered address to make as if the marriage would have never existed. The children, nonetheless, would remain considered as having been born within the marriage and would maintain all their rights (the legal distinction between legitimate and illegitimate children –as born within or without marriage- was abolished in 1998, with the new Filiation Law, No. 19,595<sup>12</sup>). In this regime, the situation of the weakest spouse would remain without regulation from a legal point of view.

This legal loophole of nullity for incompetence of the Civil Registry clerk demanded, on one hand, the consent of both spouses and, on the other, to hire a particular lawyer, because the entities that provided free legal assistance, i.e., the Judicial Assistance Corporation (hereinafter, "JAC" and in Spanish, *Corporación de Asistencia Judicial*) would not process cases of annulment for this cause. So, it could be said, until 2004 Chile had a quasi-divorce, which required mutual agreements and economical resources. And so, between 1970 and 2004 Chile registered more than 160,000 marriage annulments and, if taken into consideration de 20 municipal districts of the highest and lowest socioeconomic level<sup>13</sup>, it would be found that the annulment rates were, in average, approximately eight times more in the municipal district with the highest socioeconomic level, showing that the access to this disguised divorce was unequal.

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<sup>8</sup> Strictly speaking, the 1884 Civil Marriage Law included divorce, though this one did not correspond to what is commonly understood by divorce, because, inspired in the Canon Law, it didn't include bond dissolution. Hereinafter, by "divorce" we shall mean absolute divorce.

<sup>9</sup> There were draft legislations of divorce in 1917, 1927, 1933, 1964, 1969 and 1971.

<sup>10</sup> Gazmuri (2009), p. 43.

<sup>11</sup> The origin of nullity for this cause corresponded to a change in the interpretation of article 308 of the Civil Code. This left the legitimacy of the offspring in a precarious situation, which was amended with Law No. 10,271 of 1952. See Rodriguez (2009), p.73

<sup>12</sup> Today, the Filiation Law distinguishes between marital and non-marital filiation, but only for the purposes of determining paternity.

<sup>13</sup> Measured through the Human Development Index (HDI) of the 2003's PNUD. This index weights by equal means the health indicators, education level and income for each municipal district. See Mideplan and PNUD (2004).

The nullity for incompetence of the Civil Registry officer was based in an argument that can hardly be considered as a real defect of nullity of the marriage<sup>14</sup> and everyone knew it. Besides, generally, witnesses lied on saying that the spouse didn't live where he/she said he/she lived and everyone knew this too. And so on, the nullity for this cause was based on an institutionalized lie, which, even when it would have been true, did not seem reasonable. In some sense, it could be considered that nullity discredited institutions<sup>15</sup>.

On the other hand, on the year 2002 more than half a million people being legally married were living de facto separated<sup>16</sup>, circumstance which implied that their situation regarding the tuition of children and alimony among the spouses wasn't properly regulated.

This background motivated to impulse modifications of the Civil Marriage Law, for that it would include the possibility of divorce and of regulating these situations, trying to protect the weakest –in general, children and the woman-. Besides, of course there were arguments related to freedom and the right to remake the own life upon marriage failure.

Those opposing to divorce many times invoke natural law and morality, understanding that indissolubility of marriage would be a consequence of its inherent purposes: procreation, education and promotion of children and the love and friendship among the spouses<sup>17</sup>. From an empirical point of view, there would also be allusions to the fact that divorce would have adverse consequences for the divorcees and their children, possibly increasing poverty, emotional problems, academic performance and even drug abuse and crime<sup>18</sup>. Besides, it was sustained that divorce would have a multiplying effect of marital ruptures which, altogether, would have affected stability of institutions such as marriage and family<sup>19</sup>. Among the detractors, the Catholic Church had a very relevant role.

An important part of those in favour of allowing divorce agreed that the latter is not good in itself, but considered it necessary, as the “lesser evil”, to regulate a situation, in the facts, real. The principal conceptual difference between ones and others seems to be that, while the opponents to divorce believed that the function of civil law is to conform itself with natural moral law<sup>20</sup>, having the task to teach people on the ideal type of union to form a family<sup>21</sup>, the defenders of the law believed that law has a limited capacity to modify people's habits and that, for this reason, it's the law which has to accommodate to habits and uses<sup>22</sup>.

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<sup>14</sup> For example, for Barros (2002), “the generalization of the practice of annulments based on a supposes territorial incompetence of the clerk is not due (...) to the fact that the Chilean law may have an incurable legal loophole, but because the judges simply don't feel authorized to run ahead the spouses' decision to put an end to their bond” (p.12)

<sup>15</sup> For a richer analysis on nullity as a mechanism to dissolve the marital bond, see Tapia (2002).

<sup>16</sup> In the 2002 Census 531,805 people declared themselves as “separated”. This number should be increased by those who, being separated, cohabitated with someone and therefore would fit in the “cohabitant/couple”.

<sup>17</sup> Ugarte (2001)

<sup>18</sup> Larraín (1996)

<sup>19</sup> For a richer analysis of the arguments opposed to legislating on divorce, see for example Larraín (1996), Ugarte (2001), Peña (2002) and Biblioteca del Congreso Nacional (BCN)(2006)

<sup>20</sup> Ugarte (2001), p.61

<sup>21</sup> Peña (2002), p.267.

<sup>22</sup> Barros (2002)

At the end of 2002, the 77.5% of the Chilean population thought “Law should authorize divorce when it is requested by any of the spouses based in the fact that the couple is factually separated”. At the same time, the 76.5% agreed “divorce is generally the best solution when a couple seems unable to solve their marital problems”, while only a 13,8% disagreed on the same<sup>23</sup>.

For several years the divorce legislations was a mandatory national discussion topic, and such debate was intense. It is surprising then that little has been said on what happened in Chile after the enactment of the New Civil Marriage Law. This work intends to be a first approach to the subject from an empirical point of view.

### **1.1. Purpose of the research**

The general purpose of this research is to put into context the approval and enactment of divorce in Chile in year 2004 and to analyze, from an empirical point of view, what happened after the latter in terms of divorces, marriages and protection of the weakest spouse.

On a first stage of the empirical analysis (section 4.2) we intent to describe, pursuant the data allows it, the principal tendencies of the annulments, divorces, marriages, birth rates and the possible changes that they may have experienced after the new law. For this purposes, a country and municipal district level analysis will be made between years 1970 and 2009, making a distinction among groups of boroughs of different socioeconomic status.

On a second stage (section 4.3) it will be studied, from an individual point of view, the principal characteristics of the divorced population in comparison to the rest of the population in year 2009, according to CASEN survey.

On a third stage, a statistical analysis will be made to assess if after the new law any changes were observed in the marriage rates (section 5.1) and to evaluate if the objective of protecting the weakest spouse through income transferences among former spouses (section 5.2.) was accomplished.

In the following section (2) the principal aspects of the New Civil Marriage Law, and of particular relevance for this paper, are presented. The third section exhibits a theoretical framework, which contributes to the understanding of the divorce phenomenon and some international and national evidence on the subject. Section 4 contains the descriptive analysis of the information such as on a borough or individual level, and fifth shows the results of the statistical analysis. The last section exhibits the principal conclusions of the research, along with some political debate on the matter.

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<sup>23</sup> CEP (2002)

## 2. NEW CIVIL MARRIAGE LAW (LAW No. 19,947)

Marriage is a solemn contract by which a man and a woman are united actual and indissolubly for all life, with the purpose of living together, procreating and mutually helping each other.  
(Article 102 of the Civil Code)

Our Civil Marriage Law starts by saying that “family is the basic nucleus of society and that marriage is the principal base of the family” (Article 102 of the Civil Code – hereinafter, CC) and says that “marriage is a solemn contract by which a man and a woman are united actual and indissolubly for all life, with the purpose of living together, procreating and mutually helping each other”.

The principal effects of marriage are that the spouses have to form a mutual home (C.C. Article 133) and that they owe each other help, respect, protection and fidelity in all life circumstances (C.C. Articles 131 and 132). Because of said relation, a series of rights and obligations arise for both spouses, for which, among other things, spouses may sue alimony (C.C. Article 321). Besides, being the children assumed as of the father’s, there is a goods regime between the spouses and inheritance rights are acquired for the surviving spouse<sup>24</sup>.

The big feature of the New Civil Marriage Law is that in Chapter VI, Article 53, it establishes that “divorce puts an end to marriage”. That way, on one hand, divorce extinguishes legal obligations of dissolved marriages and, on the other, it allows former spouses to enter into a new matrimonial bond<sup>25</sup>. Regarding children, the law disposes, in the same article, that divorce does not affect “whatsoever determined filiation nor the rights or obligations that arise from it”.

Divorce can be unilaterally demanded in case one of the spouses commits a serious misconduct that violated the duties or obligations that marriage imposes in relation to the spouse or children, which makes common life unbearable. Among other things, this cause comprises attacks against the spouse’s life or against any of the children; the continuous or repeated abandonment of the common home; an enforceable condemnation for the commission of any of the crimes or simple offenses against the order of families and against public morality, or against people, which involve serious disruption of family harmony; homosexual conducts; alcoholism or drug problems which constitute a serious impediment for the harmonious cohabitation between spouses or between these and their children, and attempts to initiate the spouse or children in prostitutions (Article 54).

On the other hand, divorce may be obtained if both spouses jointly request it on a common agreement and prove that their cohabitation has been interrupted for a lapse larger than 1 year; or if it is unilaterally requested, upon a lapse of at least 3 years counted from the interruption of

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<sup>24</sup> Barros (2002), p. 14.

<sup>25</sup> Barros (2002), p. 13.

cohabitation (Article 55). That way, divorce in Chile does not necessarily require the mutual consent of both spouses<sup>26</sup>.

The first possibility, *i.e.* to request divorce for an infraction attributable to other spouse, would be framed into what in literature has been called guilty or fault divorce, while the second, *i.e.* for cease of cohabitation, would correspond to a no-fault divorce, for it does not require any of the spouses responsibility on causing a fault to put an end to marriage.

The possibility of a no-fault divorce exempts the spouses of having to explore guilt and responsibilities in failure, as well as it exempts the judge of the need to sneak into the divorce candidates intimacy. The task of determining and proving fault isn't only subjective, hard and ungrateful, but also increases harshness among the spouses, prejudicing children<sup>27</sup>. For these reasons, among others, a great part of the United States and European Union Countries, in what was so-called the "Divorce Revolution", modified their legislations with an evolution from a fault to a no-fault divorce and ceasing to demand the spouse's mutual consent<sup>28</sup>.

An important function of divorce is to regulate economical relationships among former spouses, and for such purpose law considers an economical compensation "in case, as a consequence of dedicating itself to children or proper home errands, any of the spouses was unable to develop a lucrative or paid activity during marriage or did it in a lesser amount that he/she would have wanted and could" (Article 61). To determine this compensation, the following criteria are taken into consideration, "duration of marriage and cohabitation of the spouses; their economic situation, good or bad faith, age and health status of the beneficiary spouse; its situation in health and pension benefits; its professional qualification and access possibilities to the work market, and collaboration provided to the lucrative activities of the other spouse" (Article 62).

In this manner, law intends to protect the spouse left in the weakest position after the breakup, not only because of its weakness, but also because a part of its relative weakness is deemed as a product of a particular work division agreed mutually under the marital union. Because spouses many times have different skills or preferences, it is normal that work divisions are established during marital life: typically, one of the spouses will put a bigger effort in child and home care and maintenance, while the other advocates itself to a paid job. With time, and partly because of this work division, matrimonial union may acquire goods of physical and human capital, for example, investing in a house or in studies for the spouse majorly dedicated to work. This can be a problem at the breakup moment, for if the physical capital division is not always easy, less can be said for human capital.

On the other hand, when the willing-to-divorce spouse does not have enough economical resources, the situation can be hard in such a way for him/her that may end in the submission of

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<sup>26</sup> Strictly speaking, as Carlos Peña remarks, the concepts of divorce by mutual agreement and unilateral divorce would be incorrectly used, for what is provoked by divorce, once sued, is the cease of common cohabitation and not the will of any or both of the spouses. Peña (2004), p. 61. Nonetheless, due to simplicity matters, in this work we will use both concepts.

<sup>27</sup> For a deeper analysis of the effect of divorce by fault, see Weitzman (1985) and Tapia (2002)

<sup>28</sup> See, for example, Weitzman (1985) and González and Viitanen (2006).

his/her will to the strongest spouse. In such scenario, economical compensations try to equal, in some way, the right to divorce among the spouses as it provides more economical independence to the weakest<sup>29</sup>.

Finally, the new law ended with the incompetence of the Civil Registry clerk's nullity, which until 2004 had been use as a kind of divorce. If both divorce mechanisms are compared, the principal differences in practical terms would be that nullity required mutual consent, while divorce may be demanded unilaterally and that Judicial Assistance Corporations would not process nullities for this cause, but do process divorces today.

### **3. LITERATURE REVIEW**

A study of divorce -intrinsicly linked to the one of marriage- has been carried on by many disciplines. We will here show the perspectives of some that have been especially important for the fulfilment of this work and which, in general, approach the problem with a rather more social than individual point of view. Additionally, there are several psychological studies on the consequences that divorce may have in spouses and their children, though they will not be included in this paper for they escape its purposes. At the end of this section empirical evidence will also be presented.

#### **3.1. An economic theory of marriage and divorce**

“[L]ove”, that cause of marriage glorified in the American Culture.  
(Gary Becker, “A Theory of Marriage: Part II”)

Such as in varied other topics, the pioneer on applying the economical approach to marriage and divorce analysis was Gary Becker. His marriage theory<sup>30</sup> runs from two basic assumptions. First, generally people marry voluntarily (whether the decision is taken by the spouses or by their parents), from which it is possible to apply to it the theory of preferences; and second, because men and women compete on the quest for couples, we can assume that there is something such as a marriage market where everybody is seeking for the possible best couple, given the restrictions imposed by the same.

For Becker, marriage basically consists in the constitution of a common home. Upon the assumption of a world of full assurances, this will occur every time spouses are better positioned when marrying than being single. Households use the time of its members and some goods and services acquired in the market for producing other goods and services providing them utility, and are not transferable between households, but are among its different members. Thus, each

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<sup>29</sup> Tapia (2002), p.244.

<sup>30</sup> Becker (1973)

household has a production function through which, for example, the quantity and quality<sup>31</sup> of, children, love company, quality of meals or health are produced.

An important part of these home-produced goods correspond to a specific capital of marriage, given its value is diminished in case marriage ends. The most obvious example would be children, considering that time spending with them is reduced after a separation, but would also fit as other examples the acknowledgement of the habits of the couple, sexual suitability, etcetera<sup>32</sup>.

Considering that for a man and a woman to marry they must be better off, or at least they must believe so, the probability of a marriage will increase pursuant there are more complementarities in the function of production of a household comprised by both of them. These complementarities are strongly related to the will to raise children, which is one of the principal gains of marriage, in such way that the people who desire children the most, tend the most to marry. On the other hand, for Becker the productivity of a household is positively affected by human capital, increasing the gains of marriage. This way, it should be expected that education increase the possibilities of marriages.

In Becker's terms, marriage would be like a two people firm, where both spouses hire each other reciprocally: each one pays the other the difference between what is received and the household's produced totality.

To maximize the total production of a household, specialization pursuant the comparative advantages of each one of its members is possible. This way, it would be reasonable that if the alternative cost of time of any of the spouses is considerably higher than the other's (i.e. if one earns a higher salary), a corner solution may be reached<sup>33</sup>, where only one of the spouses dedicated its time on working on the market and the other dedicates himself to produce other kind of goods for the common home, for example, working for no pay in taking care of children and maintaining the common household<sup>34</sup>.

Regarding how couples are formed, Becker gives important consideration to the analysis of the interaction between the characteristics of spouses, whether they may have complementary or substitute effects in the production function. Because an important part of the production by the households has to do with children, and given the great uncertainty on how these may turn out, heritable traits become reducers of said uncertainty in production. This is how, heritable features

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<sup>31</sup> For Becker, the concept of "quality" of the children is referred on how much is invested in them. For example, a child receiving a higher education level or sleeping in its own bedroom would be a child of higher quality. See Becker (1960).

<sup>32</sup> Becker (1974), p. 320.

<sup>33</sup> In a maximization problem, a corner solution is such in which utility is not maximized with the tangency of a restriction and the indifference curve, for there is a second active restriction. A typical example is, when facing a problem of consumption choice among two goods, the agent chooses an extreme case and consumes zero of one of them, activating the restriction of no-negativity. In other words, it could be possible that, if he could, the consumer chose to consume a negative amount of such good, but because this is impossible, he is restricted to consuming zero.

<sup>34</sup> This kind of analysis on the work division has cost Becker being accused of "defending the patriarchal oppression" (Fuchs 1994, p. 187). Evidently, the "comparative advantages" of working in the market are also affected by cultural factors too. Besides, this analysis does not attend the fact that work may have a meaning besides the salary, for example, for many people it is also a vehicle to personal fulfillment. Nonetheless, Becker's argument contributes to the understanding of the empirical fact that it is common to find couples where the man works for a salary and the woman is dedicated to the household's unpaid work.

such as beauty, height, race or intelligence, will be complementary in the production function of a home and, therefore, a positive correlation can be expected from them among couples. On the contrary, fungible characteristics in the production function, as for the case of income from salaries, are substitutable among spouse and, likewise, do not require a positive correlation. Furthermore, because a higher difference between salaries among a couple maximizes the utilities of work division, a negative correlation should be expected from spouse's salaries.

Moreover, the search costs may imply that, to prevent incur in more costs in the search for the ideal couple, people mate up with someone that is not optimum, decreasing the potential gains of marriage.

Becker later on expands its marriage theory with the purpose of incorporating "love" within its analysis<sup>35</sup>. For this, he starts from the assumption that while there is "love", the utility for each one will depend, until certain point, on the goods and services consumed by the other, and with which households actually maximize only one utility function<sup>36</sup>. This way, in Becker's concept, the income of families will be higher than its production, due that a part of the product is simultaneously consumed by more than one family member. This is clearly very efficient and explains why two people in love are more probable to marry.

By incorporating uncertainty to this framework of analysis, the decision of marriage is not taken when the net benefits of marrying *are* higher than the ones of remaining single, but when *they are expected* to be. This is why it is possible that the effective utility of being married is less that the effective utility expected at the moment of marriage, which, from a critical moment and so on, will conduct into divorce.

On the other hand, it is possible that, even with total certainty, divorce may be an optimum decision in a certain stage of the lifecycle where the gains of a marriage, also optimum in the past, have decreased. For example, a couple may marry and have a happy marriage only until children have left home.

In any of both cases, for Becker, Landes and Michael (1977) the will to divorce arises when the expected utility of staying married in what remains of life is less than the one of separating and, possibly, re-marrying afterwards.

The expected utility of remaining married will depend, naturally, of the specific capital level of the marriage, for which the probability of divorce will be less, among others, while there are children and pursuant the more the marriage lasts. On the contrary, the probability of divorce decreases with the age at the moment of marrying, for with time information of the marriage market accrues, lowering the search costs. Finally, for Becker *et al.* (1977), a greater difference between

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<sup>35</sup> Becker (1974).

<sup>36</sup> This is what is addressed as family unitary model. Opposite to this, bargaining models suggest that in reality, each member of the family maximizes its own utility function and that the differences in the bargaining power of each member affect the allocation of goods. On this regard, see as an example Chiappori, Fortin and Lacroix (2002), or some applications to the Chilean case in Martínez (2009), Heggeness (2009) and Valdés (2010).

the expected and effective value of marriage increases the possibility of divorce, given that, when asymmetrical, at least one of the spouses will want to separate and, probably, find a “better” couple.

Certainly, if both spouses coincide on the will to divorce or stay together, what will happen is clear. The question is what will happen when only one spouse wants a divorce. For the authors, if the net benefits of the spouses were transferable at zero-cost the couple will split up if and only if the aggregated expected benefits of staying together are inferior to the sum of the benefits that each one would perceive while divorcing. So, upon disagreement, the spouse who obtains net benefits from divorcing may compensate the spouse having net costs. Therefore, with independence of how the property rights over the decision of divorcing are assigned, the quantity of divorces should be the same, even when the compensation schemes may differ. This is simply a Coase theorem’s application.

Then, if the decision may be unilaterally taken, the “owner” of said decision is whoever has the will to divorce. In this case, if the net benefits of divorcing for the willing spouse are less than the net benefits of staying married for the unwilling spouse, the latter may compensate the first to preserve the marriage. Analogously, if mutual agreement is required for divorce, the “owner” of the decision is who wants to remain married and will give in if it may be satisfactorily compensated. In conclusion, whichever the case may be, the amount of divorces would remain the same.

Nonetheless, there are many arguments to question the fact that this really happens. In the first place, utility is not completely transferrable, which means that compensations are not always possible. As an example, it would be enough to think about the utility that arises from time-spending with children (consider, for example, Rasul 2006). Plus, the possible presence of liquidity constraints restrains compensations from being provided.

On the other hand, a strategic behavior may place obstacles for a Coasian agreement in these issues. Plus, the net benefits of remaining married are not independent of the spouse’s will to divorce. In other words, marriage between two people may be of a very different quality pursuant to how much each one is willing to collaborate and, clearly, cooperation within marriage is not for hire. Thus, even when the one party willing to stay married may compensate the party willing to divorce with the purpose of maintaining marriage, there is no way to avoid that the latter may contribute in a lesser amount than he/she could, diminishing marriage’s benefits for both spouses (consider, for example, Fella *et al.* 2004).

Finally, the costs and benefits of staying married are difficult enough to measure regarding oneself, imagine how much more about the rest. That is why we are facing an evident problem of information asymmetry, where each spouse has the incentives to overrate the valuation of his status of preference. For example, a spouse demanding compensation in order to grant divorce may hide that, in reality, divorce does not seem so unappealing to him/her. Because of the foregoing, the compensation solution may turn out as impracticable. A proposed way out to this dilemma is agreeing compensations *ex-ante*, case in which inefficiencies may also arise (see Peters, 1986).

### 3.2. A sociologic marriage theory by Peter Berger

Marriage is a narrative institution.  
(Javier Marias, *A Heart so White*)

In “Marriage and the Construction of Reality”, Peter Berger (1991) starts from the idea that, unlike a traditional society where the sense of life is given and roles are predefined, modern society’s individuals have to find a way to live in a world that offers such a variety of senses that ends making it seem immense, unstable, powerful, rare and nearly incomprehensible. This world, as the author calls it’s a “world without a home”, is socially construed, but is understood as predefined, and people, within a tolerated framework, modify it and give sense to it, creating their own subjective world where they “may feel at home”<sup>37</sup>.

This world needs permanent validation, which is achieved through relations with other inhabitants and, specially, with those nearest and more influential to the individual, to whom Berger calls the *significant others*. The scarcity of relationships with significant others leads the individual to an anomic state, *i.e.* of absence of social rules, where it cannot acknowledge which is *its* world, or less its place within it. But when relations with others are intense and continual, a real and stable world may be constructed through conversation.

By the way, not all significant others are equally relevant in the world construction and validation process, but it is something that depends in the relation’s proximity. And so, the institution of marriage shows itself as crucial in the construction process, becoming an important shelter against anomia.

In marriage, two individuals originally having own worlds join together and redefine themselves. In Javier Marias’s words, marriage is “thinking everything twice instead of once, once through thought and the second through narration (...)” until “there is nothing left but an aftertaste of the facts and thoughts of an individual which does not end being neither transmitted, nor translated matrimonially”<sup>38</sup>. This way, personal perceptions of reality relate to others’, so the significant others of each are now shared and even the individual past is re-construed through speech.

In this frame, Berger sustains that in societies controlling the public sphere but no interfering with the private sphere, marriage becomes *the* autonomous space. For in this inhospitable world, marriage is able to create a homelike world in which a spouse is not just *someone*, but, even perhaps, “within its enchanted scope”, may become “Lord and Master”<sup>39</sup>.

That is how marriage is been demanded, neither more nor less, to build up “reality”. That is why, just because it is a hard task, our society has seen divorce grow in front of her eyes. But for Berger, people do not divorce more because they value less marriage, but because contrarily, in this homeless world marriage has become such a crucial part of its own constitution, that individuals are unwilling to tolerate for “the less than a completely successful marital arrangement they had

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<sup>37</sup> Berger (1991), p. 124.

<sup>38</sup> Marias (1996), p. 124.

<sup>39</sup> Berger (1991), p. 123.

contracted with the particular individual in question”<sup>40</sup>. Evidence on this is expressed in that most part of divorced people have the intention of marrying again, and in fact, is a common practice.

### 3.3. Empirical evidence

Regarding which would be the “determinants” of divorce, empiric literature has reached a relative agreement on that as sooner a couple is formed, the possibilities of breaking up are higher. This would be related to the fact that lesser age is related to lower psychological maturity, more propensity to drug and alcohol abuse and more labor instability, all factors that difficult marriage stability<sup>41-42</sup>. Pre-marital cohabitation and the presence of children or former marriages<sup>43</sup> would also increase the risk of divorce, though it may be possible that this is due to a less attachment to traditional rules related to marriage. Meanwhile, people from families with divorced parents would also have a higher probability of divorcing themselves. In what concerns economic factors, it has been generally found that a breakup risk is increased by the participation of women in the labor market and with men’s unemployment<sup>44</sup>.

For the Chilean case, empirical literature related to divorce is scarce. Herrera and Valenzuela (2006) have made a descriptive analysis based in census and in the National Family Survey (Desuc, for its Spanish initials) and have found, among other things, that there is no clear relation between the probability of a breakup and education and socioeconomic level, that identification with a certain religion –whichever it may be- positively affects marital stability and that, even when the parent’s relationship affects their children’s attitude towards separation, it has not been evidenced that children from separated parents tend more to divorce, which would contradict international evidence on the matter.

Also, a research by Sanhueza, Bravo and Quijada (2007) study the socioeconomic determinants of marriage dissolution<sup>45</sup>, and, in general terms, find similar results to those suggested by the Becker *et al.* (1977) model: the probability of separation decreases with the amount of children, the age at which they married, the duration of the marriage, the expected capacity to produce income and if the spouses work or not, while it increases with education and extra-marital children, among other things.

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<sup>40</sup> *Ibid.*, p. 137.

<sup>41</sup> Though there are also studies arguing that the relation between the probability of divorce and age at the time of marriage would not be linear or that it would only be present in countries of medium or high Gross National Product.

<sup>42</sup> Herrera and Valenzuela (2006), pp. 233-234.

<sup>43</sup> This could also be related to the actual presence of the factors that contributed to the breakup of the first marriage or to that second marriages could be more complex because of the presence of children from the first marriage (Kiernan and Mueller, 1998, p. 1)

<sup>44</sup> A good summary of this literature is found in Kiernan and Mueller, 1998, pp. 1-2.

<sup>45</sup> Based in a Probit model, a semi-parametric model and by the method of instrumental variables, using data of the 2002 Social Protection Survey.

Finally, Vignau (2010)<sup>46</sup> has found that women's income has a positive effect on the probability of separation, which is coherent with international evidence. Plus, this effect would have reduced itself after the promulgation of the new Civil Marriage Law, mostly among the highest income households.

Empiric literature on the consequences of allowing divorce is nearly none, for in the majority of countries it was permitted a long time ago and therefore, there is hardly any information on the matter. One of the few found works reveals that in Ireland, the last country in allowing divorce before Chile, the divorce requests after its 1996 permission were lower than the expected by its detractors (see Burley and Regan, 2002).

Meanwhile, there have been great differences regarding the empirical effect on divorce rates produced by the liberalization of the American 60's "Divorce Revolution". Firstly, Peters (1986 and 1992) found that divorces hadn't increase, therefore validating Becker's (and Coase's) model, nonetheless Allen (1992) arrived to opposite results. Later on, Friedberg (1998) explained the motives of the differences between Peters and Allen and preferred the non-coasian thesis, but then Wolfers (2006), while analyzing a larger data-base found that liberalization had indeed effects, though they were little and non-permanent. On the other hand, in similar analysis for the European case it has been found that liberalization of divorce laws was followed by important increases in the divorce rates (González and Viitanen 2006).

Finally, little has been written on the effect of divorce laws on marriage. For Rasul (2003), divorce's liberalization would have two different effects on divorce rates. On one hand, by decreasing exit costs, people have the certainty that there are no possibilities of being trapped in a relationship they don't like, which increases marriage's value. But on the other hand, they could face the termination of their marriage when in reality they are willing to stay married, which decreases marriage's value. For the case of the American "Divorce Revolution", Rasul finds that the liberalization of divorce laws implied a significant reduction of marriage rates, with which the second effect prevails. Nonetheless, Rasul shows evidence indicating that new marriages, this is conceived after regulation changes, are "better" and would have, among other things, less probabilities of divorce.

#### **4. DESCRIPTIVE ANALYSIS**

This section begins with explaining the origin and limitations of empirical analysis data. Then, a descriptive analysis on a country and borough level will be presented, starting by divorce's evolution on time and other related variables such as nullity, marriage and birth rates. Plus, for each case, differences between the tendencies of the twenty boroughs with the highest and lowest socioeconomic level will be showed, measured through the 2003 Human Development Index (HDI).

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<sup>46</sup> Based in a Probit model with Heckman correction and instrumental variables, using data of the 1996 and 2006 CASEN survey panel.

Regarding the twenty boroughs with less HDI, nineteen are rural, while the twenty boroughs with the highest HDI are rural areas<sup>47-48</sup>. Because of this, it is possible that part of the found differences is due to a difference of the population's rural/urban conditions, and not only to a socioeconomic level gap. To solve this, the tendencies of the twenty urban boroughs with lowest HDI have been included in the analysis<sup>49</sup>. Correlations between some of the analyzed variables will also be considered.

Lastly, based in 2009 CASEN survey, an analysis on an individual level will be made, looking forward to the characterization of the Chilean group of divorced.

#### 4.1. Data

This paper uses data deriving from different sources, a large part of them obtained due to the Transparency Law. The annual information on nullities, divorces, marriages and births per borough, besides the annual data of entering into marriage's average age, were provided by the Civil Registry. The information relative to divorces made through Judicial Assistance Corporations was delivered by the Region Metropolitana's (Santiago's metropolitan area) JAC. The annual population measured per boroughs, unemployment per regions, age range per the total population and the census religiousness and female labor participation data per boroughs were provided by the National Statistics Institute (hereinafter, NSI). The information of population per boroughs only officially exists since 1990, which forces to calculate borough rates from that date and on. The information from the Human Development Index per boroughs corresponds to year 2003 and was obtained from the work of Mideplan (Chilean Planning Ministry) and PNUD (2004). The urban and rural population data corresponds to year 2002 (in order to adjust itself to census information) and were obtained from the National Municipal Information System (in Spanish SINIM, [www.sinim.gov.cl](http://www.sinim.gov.cl)). For the micro level analysis, information from the 2009 CASEN survey was used<sup>50</sup>.

It must be mentioned that there is several information that would have been very useful for this work's purposes, but unluckily was not available. For example, in order to calculate what part of the divorces corresponds to the accrued amount of marriages willing to divorce before the

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<sup>47</sup> The municipal districts with lowers HDI are, from lower to higher: San Juan De La Costa, Trehuaco, Ninhue, O'Higgins, Saavedra, Tirúa, Ranquil, Quillón, Quirihue, Purén, Yumbel, Portezuelo, Los Sauces, Contulmo, Colchane, Lumaco, Curarrehue, Carahue, Florida and Lago Ranco. The municipal districts with higher HDI are, from lower to higher: La Cisterna, María Elena, La Serena, Concón, Maipú, Quilicura, San Pedro De La Paz, Diego de Almagro, Calera de Tango, Pica, Cabo De Hornos, Macul, Pirque, Santiago, Ñuñoa, La Reina, Providencia, Lo Barnechea, Las Condes and Vitacura.

<sup>48</sup> Taking Subdere as a reference (2004), the municipal districts which according to the 2002 Census had more than a 60% rural population were classified as "rural", and those having less than a 40% of rural population were classified as "urban".

<sup>49</sup> These Are Uirihue, Coelemu, Renaico, Bulnes, Purranque, Negrete, Lebu, Collipulli, Cabrero, Mulchén, Cañete, Lota, Curanilahue, Gorbea, Los Álamos, San Rosendo, Lanco, Loncoche, San Carlos and Peralillo

<sup>50</sup> This investigation used information of the National Socioeconomic Characterization Survey (for its Spanish initials, CASEN). The author wishes to thank the Ministry of Planning, which holds the copyright of the Survey, for allowing her to dispose of such data base. All results of the study are responsibility of the author's and in no way commit such Ministry.

enactment of the new law<sup>51</sup>, it would have been of great interest to find out when did divorced couples materially separate<sup>52</sup>. Access to longitudinal information on divorcing marriages would also have been very useful, whether backwards or forwards, to roughly characterize what leads to divorce and which are its consequences<sup>53</sup>. Lastly, in order to calculate the marriage and divorce rates of its risk population (i.e. non-married and married adult population, respectively), it would have been handy to count with yearly borough level data on the population's age structure and the composition of its civil status. Some of this information is available at the NSI, but it can only be found with a census frequency and yearly data is calculated only with linear interpolation methods, having no consideration for demographic changes in birth and death rates per boroughs, changes in civil status and/or migration. This does not only lead to imprecisions, but also, as two variables are calculated by a similar method, to spurious correlation problems among the different variables. For these reasons, it has been decided to calculate the rates regarding the yearly total population per boroughs.

## **4.2. Country and borough level analysis**

### **4.2.1 Nullities and divorces**

As showed on Figure No. 1, nullity, which until before the new law was the available mechanism to dissolve the marital bond, had an increasing tendency through time, more than duplicating itself during the period between years 1970 and 2004. But in 2005, when for all practical purposes the New Civil Marriage law started to be in force<sup>54</sup>, annulments decreased practically to zero, revealing they were completely replaced by divorce. This in a way proves that until 2004, nullity basically operated as a quasi-divorce.

Regarding a socioeconomic level, the nullity rates per boroughs present radical differences: in average, for the twenty boroughs with highest HDI the quantity of nullities with regard to its population was nearly eight times the quantity of the twenty boroughs with lowest HDI. The difference with the twenty borough of lowest HDI is a little lower, which indicates that nullities were less frequent in rural areas.

By adding nullities and divorces, and with the purpose of expressing the totality of the registered marital breakups with bond dissolution (Figure No. 2) –hereinafter addressed as “official breakups”-, it may be definitively observed that there was a structural change after the 2004 law.

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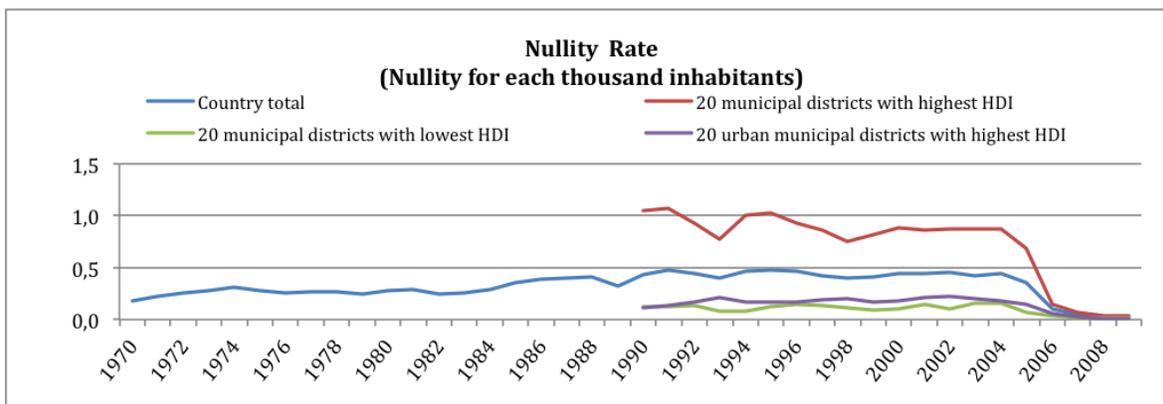
<sup>51</sup> This information could be obtained by reviewing divorce sentences one by one, for this information is exposed in the section “recitals”.

<sup>52</sup> Due to a request of information made for this work where this data was solicited to the Judicial Power, from November 2010 the date of cease of common cohabitation will start to be registered in the divorce cases.

<sup>53</sup> For this purposes, data from any kind of panel Survey would have been useful, such as the Panel CASEN. This was implemented for the last time in 1996, 2001 and 2006, meaning it doesn't cover much time since the new Civil Marriage Law (2004). Consequently, the amount of divorces in 2006 is only 18, which doesn't allow a statistical analysis.

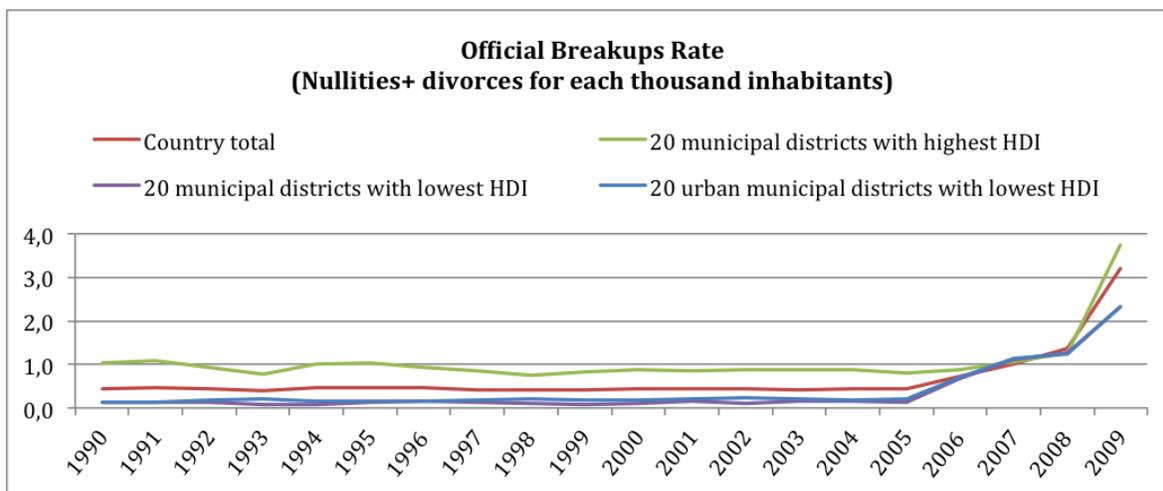
<sup>54</sup> The law was introduced on November 18<sup>th</sup>, 2004, with which it had little effect that same year (it should be also considered that, additionally, the variables that in general are analyzed here take some time in coming into effect). Because of this, hereinafter we will consider that it actually came into force on 2005.

FIGURE NO. 1:



Source: Personal elaboration, based on data provided by the Civil Registry and the NSI.

FIGURE NO. 2:



Source: Personal elaboration, based on data provided by the Civil Registry and the NSI.

The official breakups rate was multiplied by more than seven times in only five years, going from 0.4 in 2004 to 3.2 in 2009, which is related to the fact that the new law propended to better access to the formalization of the breakup, whether because divorces without mutual consent are allowed or because divorces may be processed for free through JAC.

TABLE NO. 1: SEPARATED, ANNULLED AND DIVORCED POPULATION  
(Percentage of adult population)

1998	5,32
2000	5,61
2003	5,86
2006	6,44
2009	6,29

*Source:* Personal estimations based on the 1998-2009 CASEN surveys.

This does not necessarily mean that after the new law more marriages are divorcing, but only that more separated couples –whether in the previous year or years- are formalizing their breakup. The lack of data on *de facto* separations impedes determining if more or less people are separating, with which we cannot establish if the Chilean case adjusts to the Coase theorem application, model that predicts that changes in the allocation of property entitlements on the divorce decision should not lead to more nor less divorces. Nonetheless, as Figure No. 1 exhibits, the adult population percentage with a civil status corresponding to any kind of breakup –separated, divorced and annulled- had a more significant increase between 1998 and 2003 – this is, before the law-, than between 2003 and 2009 –this is, considering the new law-. Even more, between 2006 and 2009 this percentage decreased. This way, even when we do not count with information on how many people separated before the law and how many do now, information of the amount of separated, annulled and divorced suggests that there has not been a breakup boom.

Before analysing the divorce figures, it is indispensable to have in mind that when the Divorce Law was enacted in 2004, there already was a great accruelement of couples willing to get a divorce. For this reasons, divorce rates do not only reflect breakups that from year to year put an end to marriages, but also breakups that may have been waiting for dozens of years to be concluded. In other words, besides the divorce flow effect, there is also an important *stock* effect.

Unfortunately, data on divorce in Chile doesn't allow making a difference between these two effects, which makes the task of leading a comprehensive research on the matter<sup>55</sup> even harder. With time, couples that wanted to divorce before the law will be able to do so, making less relevant the *stock* effect, and facilitating the study on the topic.

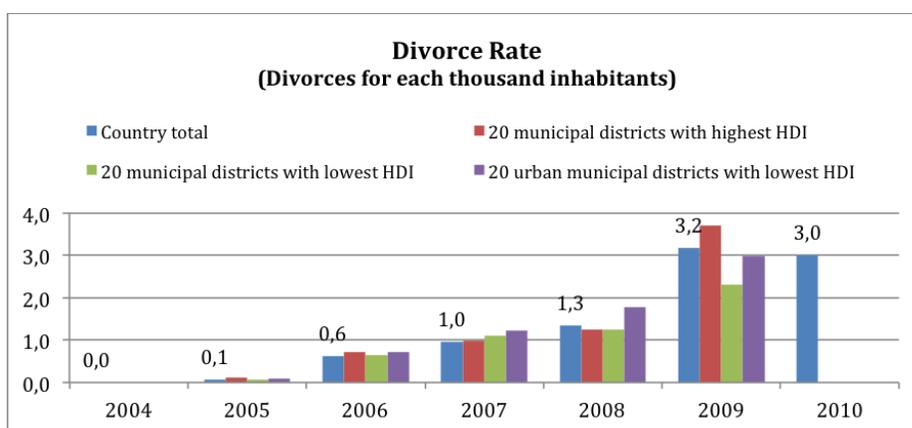
As it may be observed in Figure No. 3, the information shows that the total of divorces increased from the moment in which the law was enacted, to a *peak* of 3.2 divorces for each

<sup>55</sup> Even when we do not count with data on the year of separation of separated couples which then divorced, we know that those marrying after the new Civil Marriage Law correspond definitively to a flow of divorces and not to a pre-2004 accrued stock. Nonetheless, these cases correspond only to a 2.69% of the divorces in Chile, which is a rather low inferior cap for the annual divorces flow.

thousand inhabitants<sup>56</sup> in year 2009, and falling to 3 in 2010<sup>57</sup>. This 2010 rate-dropping may be a signal supporting the fact that the *stock* effect has become less important.

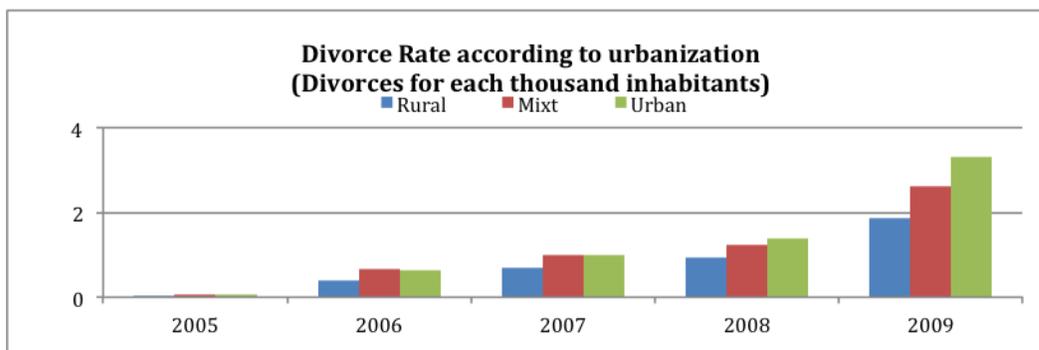
It is important to remark that, even considering the existence of couples that wanted a divorce at the moment the law was enacted, the divorce rates in Chile are not substantially higher to those of developed countries: for example, on 2003, France, Canada, Sweden, Germany and England had rates between 2.1 and 2.8 divorces for each thousand inhabitants and the United States' was 3.6<sup>58</sup>. Regarding other Latin-American countries, nonetheless data is scarce, it may be found that Mexico has a divorce rate of only 0.7, Costa Rica a 2.8, Cuba a 3.2 and Uruguay 4.3, which shows that divorces in Chile do not substantially outstand its neighbors<sup>59</sup>.

FIGURE NO. 3:



Source: Personal elaboration based on data provided by the Civil Registry and the NSI.

FIGURE NO. 4:



Source: Personal elaboration based on data provided by the Civil Registry and the NSI.

<sup>56</sup> As said before, ideally, divorce rates should be calculated over the married population total, which is the population “vulnerable” to divorcing. This would allow us to get somehow near to the concept of “probability of divorce”. Nonetheless, there is no precise information on the distribution of the population per marital status on a municipal district level.

<sup>57</sup> The 2010 data was obtained after the development of the rest of the study, and that is why it is the only case in which such year is analyzed.

<sup>58</sup> Data quoted in Stevenson and Wolfers (2007)

<sup>59</sup> Data for 2004 according to the UN (2008). The Costa Rica data corresponds to 2005 and the Uruguay data is qualified by the UN as “temporary”.

When analyzing divorce rates in the boroughs of highest and lowest socioeconomic levels, with exception of year 2009, no relevant differences may be observed. In average, the relation between the rates of official breakups of the twenty boroughs of highest and lowest HDI is only of 1.3 times, which is really low in comparison to the relation of eight times that annulments presented. In other words, the Chilean Divorce Law reduced access gaps to a marital breakup with marriage bond dissolution.

More important differences are those presented by the comparison of rural, mixt and urban boroughs, for in general, the divorce rates increase with the urbanization level (Figure No. 4). This may be due to the fact that rural areas are more distant to urban centers with civic institutions or may as well have a lower esteem of legal formalities. Additionally, marriage markets may be more restricted in rural areas, with which the urgency to divorce would be lower<sup>60-61</sup>.

On the other hand, while analyzing divorces made in Chile regarding the amount of children (Figure No.5), of a total of nearly 145,000 consigned divorces by the Civil Registry by October, 2010<sup>62</sup>, it may be found that the 18.7% of the cases did not have children within marriage, a 32.8% had only one children, and then the divorce fraction decreases pursuant the amount of children increases. The 42.5% of the cases had one children being a minor at the moment of divorce, and the 14.2% of the cases had one child younger than 10 years old.

The average duration of marriages of divorced people in Chile is approximately 22 years, which compared to an average close to 9 in the United States<sup>63</sup>, suggests that it is possible that a great part of them have been separated a long time ago before divorce.

Figure No.5 also shows that the duration of marriage tends to increase with the amount of children. Those variables have a 0.27 positive correlation. This is consistent with Becker's theory, which defends that children correspond to a specific capital of marriage and, therefore, reduce the probabilities of divorce. In any case, causality may go in the opposite sense, for it may be the duration of marriage that promotes children. Furthermore, Becker *et al.* (1977) suggests that an

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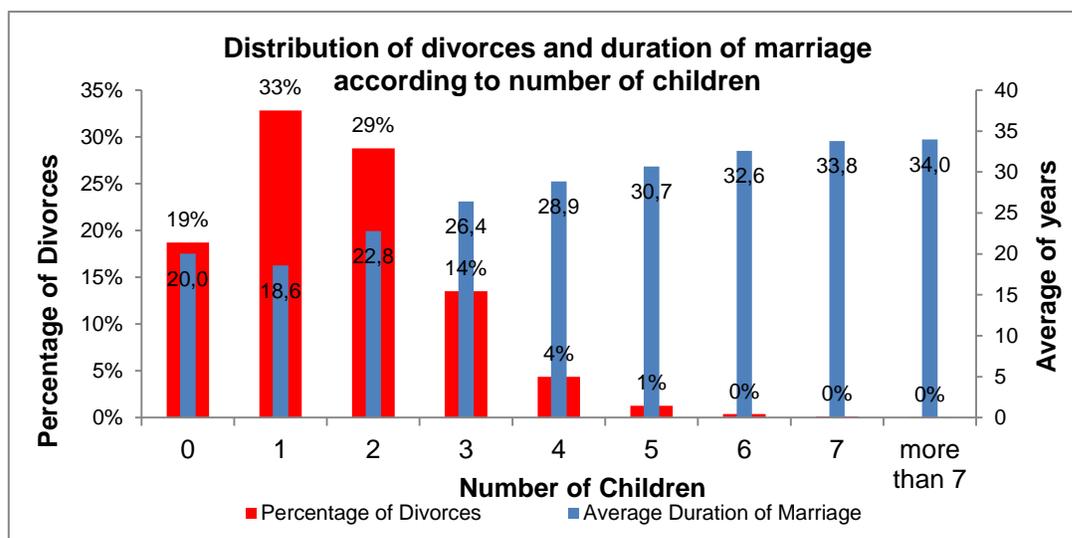
<sup>60</sup> Another possible hypothesis is that the rural areas may have showed a higher presence of certain Mapuche rooted traditions, in which the women, when marrying, is obliged to move to its new husband's land, losing the right to her father's land o having difficulties to exercise it, which clearly hampers the women's option to divorce. According to the 2002 Census, the 11.2% of the rural areas inhabitants belongs to a mapuche indigenous town and according to CEP (2006), the 68.6% of the mapuche people agreed on that, when marrying, the mapuche woman should move to live in her husband's land, while the 15.2% agreed on that the woman should lose the right to her father's land. Nonetheless, while analyzing the information, it was found that the divorce rates of the rural areas with higher mapuche people presence (regions VIII, IX, X and XIV) weren't very different to the rest of the country's rural areas, which dismisses this hypothesis.

<sup>61</sup> The relation between the divorce rates and other municipal district based variables was also looked for, for example, levels of unemployment and religiousness indicators, but the results did not show interesting differences, possibly because a higher level of data disaggregation would have been required.

<sup>62</sup> The data provided by the Civil Registry correspond to 144,325 divorces, of which 136 were ignored for this analysis because they didn't count with all the necessary information.

<sup>63</sup> Stevenson and Wolfers (2007), p. 34.

FIGURE No. 5:



Source: Personal elaboration based on data provided by the Civil Registry.

auto-accomplished expectations effect may arise, for the possibility of divorce discourages the investment in specific marriage capital, reducing marriage's value, and therefore, increasing the divorce probability<sup>64</sup>.

In addition, the genre of children of divorced parents does not differ of the country's genre of born children, which indicates that it has no influence in Chilean's probability of divorce<sup>65</sup>.

Regarding the type of obtained divorce, we only have information of the approximate 50,000 divorces processed by the Judicial Assistance Corporations between 2006 and August 2010<sup>66</sup>. Of these, a 56.8% has been because of the cease of cohabitation and mutual agreement, being the 42.1% of the ceases of cohabitation sued unilaterally and only a 1.1% for fault. Due to that, before the approval of divorce nullity allowed to dissolve the marital bond only by mutual agreement, it can be expected that, within the *stock* of cases that afterwards seek for divorce, there had been a relatively higher representation of couples in which only one of the spouses wish to divorce. For this reason, pursuant divorces corresponding to the *stock* portion are formalized, the causes for unilaterally sued divorce should relatively start dropping through time until stabilizing: this

<sup>64</sup> Becker *et al.* (1977), p. 1152.

<sup>65</sup> Among the divorces made in Chile it may be found that, in total, there are more sons than daughters (approximately a 3% more), and that within marriages having only children of one genre, there is up to a 5% more cases where children were all men. Notwithstanding this, this inclination towards male children among divorcees does not indicate anything regarding the effect of the composition of children per genre in the probability of divorce, for in Chile there are more male newborns than female in a 4.5% (NSI 2006 and 2007), which is altogether compensated in time due to a lower female death rate.

<sup>66</sup> The information registered by the Judicial Power are insufficient to calculate this statistics on a country level, for the registries do not precisely distinguish between the different divorce types. Due to a request made for this study, this would have started to be made from November 2010.

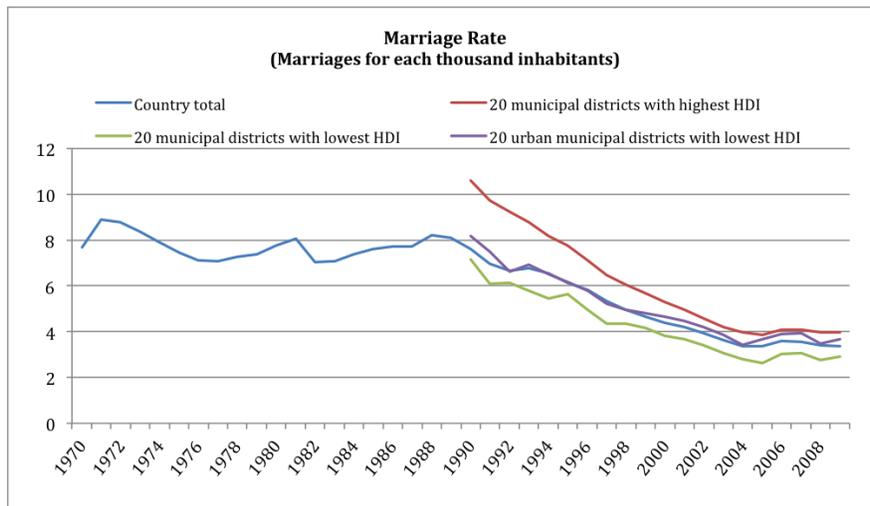
is how in 2006 these divorces represented the 57.7% of the registered causes and already in 2010 they had descended to a 54.7%<sup>67</sup>.

During the period comprehended by those dates, the relation between divorces causes registered and finished by JACs in Family Courts started to decrease, going from 4.3 times in 2006 to 0.7 times in 2010. This indicates that the initial congestion had been overcome, until it became an efficient system, capable of finishing each year more causes than the amount of causes being filed and by this means reducing the pending causes. But the Courts' efficiency was not similar per type of divorce: the totality of filed causes was a 5.5% higher than the causes finished in the divorce for cease of cohabitation and with mutual agreement cases, 7.2% higher in the cease of cohabitation sued unilaterally cases and a 33.4% in divorces for fault, which is comprehensible for it is naturally easier to close a case if there is agreement among the spouses, opposite to if there is not, and it is also easier to prove the mutual cease of cohabitation than proving fault.

#### 4.2.2. Marriages

Between 1970 and the beginning of the 90s, the marriage rate fluctuated with a certain stability between six and eight marriages per one thousand inhabitants<sup>68</sup>, maintaining, more or

FIGURE No. 6:



Source: Personal elaboration based in data provided by the Civil Registry and the NSI.

<sup>67</sup> Something similar could be speculated regarding divorce by fault, though such effect would be counteracted by the fact that many of the couples belonging to the stock of people willing to divorce before the law and which would have qualified to sue for divorce by fault could have chosen to do it via cease of cohabitation, because they would have already complied with the requested time limits, but it may be that the in the flow of couples that yearly qualify for divorce by fault, one of the parties may not be eager to wait for such deadline and decide to sue divorce by fault. The data shows that, although divorces by fault significantly fell after the first year, since then have maintained their levels relatively stable.

<sup>68</sup> See note 55. In this case, to calculate marriages over the "vulnerable" population, it would have been necessary to count with data on the total of single adult population per boroughs. In any case, the evolution in time of the marriage rate over the "vulnerable" population in Chile has been historically very similar to the marriage rate over the population total (Herrera and Valenzuela 2006, pp. 226-227).

less, in similar levels to the ones acquired since half the XIX century<sup>69</sup>. Since 1990, the marriage rate acquires a string negative tendency that stays until 2005, when it increases a bit and stabilizes around less than four marriages for each thousand inhabitants.

Rate marriage figures from the last years are low if compared to figures from developed countries: France, Italy, Canada, Sweden, Germany and England show, from lowest to highest, between 4.3 and 5.1 marriages for each thousand inhabitants; and United States, once more an outlier, reaches 7.4<sup>70</sup>. In the Latin American case, even when Peru, Argentina and Uruguay, having rates of 2.9, 3.4 and 4 respectively, also have less marriages than the developed world, other countries such as Cuba (4.5), Mexico (5.8) and Costa Rica (6.1) broadly overcome us<sup>71</sup>.

This low propensity to marriage does not necessarily mean that Chileans are less prone to living in couples, but that they formalize it less, a natural tendency that according to some, comes from times of the formation of the national state<sup>72</sup>. This way, by comparing the non-marital cohabitation rates on the total of the 2006 adult population, we may find that, meanwhile in Italy and the United States this fact is less of a 5% (3.9 and 4.7 respectively), and in Canada, France, England and Sweden fluctuates between 10.7 and 11.7%<sup>73</sup>, in Chile it goes over a 13.6%<sup>74</sup>. It is possible that this is due to cultural factors, for example, a lower value granted to legal formalities, or also institutional factors, such as a kind of discourage to marriage. An example to the latter is that one of the requirements to access a house subsidy in Chile is that the spouse lacks of a home<sup>75</sup>, with which a married couple may only access one subsidy, while two cohabitants may, eventually, access two, which is a clear discourage to marriage, at least until they “get the house”.

Regarding the differences in the marriage rate between the boroughs of highest and lowest socioeconomic level, it may be observed that although tendencies are similar, marriage levels are by far higher in boroughs with higher HDI. This has also been historically observed<sup>76</sup>, and is coherent with Becker (1973). Section 5.1 makes a further detailed analysis of factors affecting marriage rates per borough.

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<sup>69</sup> *Chile Statistical Yearbook*, several years, quoted in Ponce de León, Rengifo and Serrano (2006), p. 65.

<sup>70</sup> Stevenson and Wolfers (2007)

<sup>71</sup> Data for 2004 according to the UN (2008)

<sup>72</sup> Ponce de León, Rengifo and Serrano (2006), p. 66

<sup>73</sup> Stevenson and Wolfers (2007).

<sup>74</sup> Data estimations based in 2006 CASEN, corresponding to the year closest to the Stevenson and Wolfers' (2006) information.

<sup>75</sup> Information available in [http://www.minvu.cl/opensite\\_det\\_20070517144036.aspx](http://www.minvu.cl/opensite_det_20070517144036.aspx).

<sup>76</sup> Ponce de León, Rengifo and Serrano (2006), p. 66.

TABLE No. 2: MARITAL STATUS OF THE CHILEAN POPULATION

	<b>% Married</b>	<b>% Cohabiting</b>
CASEN 1990	36,9	3,6
CASEN 1992	36,5	4
CASEN 1994	37,3	4,2
CASEN 1996	35	5,9
CASEN 1998	34,8	6
CASEN 2000	34,3	6,9
CASEN 2003	32,7	8,4
CASEN 2006	31	9,7
CASEN 2009	30,7	10,3
Census 1992*	50,72	5,56
Census 2002*	46,16	8,86

\*Percentage for population over 15 years.

Source: Personal elaboration based on the 1990-2009 CASEN surveys and the 1992-2002 Census.

The decrease of marriages between 1989 and 2005 may be related to various factors<sup>77</sup>. In the first place, there is good evidence on that during the period there was an important cultural change regarding the social acceptance of cohabitation for non-married couples. For example, in year 1998, a 50% of the population agreed on that “it is ok for a couple to live together having no intention to marry” and, only four years later, in year 2002, the level of agreement on the same ascended to 67%<sup>78</sup>. Among other things, this may had led to, whether measured through population census or CASEN surveys<sup>79</sup>, the gradual reduction of the gap between the married population fraction and the cohabiting one.

Simultaneously, women have started to incorporate themselves in the labor world: if in 1970 women’s labor participation, measured over female population between 15 and 64 years, was 22.9%<sup>80</sup>, by the end of 2009 it reached over 48%<sup>81</sup>. With no doubts, the access to the labor world constitutes a fundamental change which, among other things, gives women more economic independence, making it easier for them to live on their own, or even, with their children. Because of this, living with a couple came from being a kind of necessity to being an option, which increased the requirements to want to marry. At the same time, from Becker’s perspective (1973), this reduces the advantages of work specialization within marriage, making it less attractive.

On the other hand, the generalization of the pill, after its arrival to Chile on the first years of the 60’s decade, allowed separating in a greater way the sexual act from procreation. Without the

<sup>77</sup> For further analysis on this topic, see Stevenson and Wolfers (2007).

<sup>78</sup> CEP (2008) and CEP (2002). It must be noted that the question is slightly different, for in 2002 the degree of agreement with “*is it acceptable that a couple cohabits without having the intention to marry*” was asked.

<sup>79</sup> The census made the marital status question only to people over 15 years old (see guide of the census officer available at <http://espino.ine.cl/cgi-bin/RpWebEngine.exe/PortalAction?&mode=main&Base=CpCHI2KCom&main=Webservermain.inl>).

<sup>80</sup> Estimations based on Díaz, Lüders and Wagner (2005).

<sup>81</sup> Personal estimations based in the NSI information for the 2009 November-January period.

risk of children, marriage was less necessary as a vehicle of having an active sexual life, which may also have reduced the incentives to marry.

Plus, the decision of marrying is being taken each day later on, which also diminishes marriage rates<sup>82</sup>. For example, between 1980 and 2008 the average age in which people married increased from a 23.8 to 29.3 for women and from a 26.6 to a 32.1 for men<sup>83</sup>. Postponement of marriage has a relation with the arrival of contraceptives and, also very important, with the increase of educational levels, for in general, people don't usually marry while they haven't finished studying.

Finally, from a demographic point of view, population has gotten old, for which the percentage of population susceptible to marrying (i.e. bachelor adults) has relatively reduced, increasing the rate's denominator.

All these factor, and probably many others<sup>84</sup>, may have collaborated to the decrease since 1990 of the marriage rate. However, in year 2005 the marriage rate increases substantially and stabilizes until the end of the period, in 2009. What is most interesting of this is that the change of tendency, which by the way is observed in all analyzed groups of boroughs, in fact meets the coming into effect of the New Marriage Law in year 2005<sup>85</sup>.

Why may the divorce option positively affect marriage rates? In the first place, the new law allowed divorce even when only one of the parties wanted it, while nullity could only be obtained by mutual agreement. Therefore, since that moment, people who had not been able to annul due to the lack of agreement of their spouse and which possibly wanted to re-marry could access divorce and were able to enter a second marriage. At the same time, people who had no resources to previously annul their marriage could, since the enactment of the 2004 law, get a divorce with the help of the Judicial Assistance Corporations.

This is how between 2004 and 2009, there were approximately 19,000 marriages in which at least one of the spouses was divorced. Figure No.3 shows that the cases in which both spouses were divorced are relatively low and that when only one was divorced, it is more common for it to be the male. In effect, of the totality of divorced people who have re-married, 63% are men, which indicates that after a divorce men have higher chances of marrying again than women, or that they take less in doing so, something which by the way is broadly documented by the international literature. For example, for the United States case, Rasul (2003) has found that in the mid-nineties, after a divorce men were 1.5 times more prone to re-marrying than women<sup>86</sup>.

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<sup>82</sup> At least temporarily. *Ceteris paribus*, if the age for marriage is stabilized, in some point a new stationary balance with marriage rates identical to the initial ones should be reached.

<sup>83</sup> NSI (2000) and NSI Vital Statistics, at [http://palma.ine.cl/demografia/SELECCIoN\\_INDICADoRES.aspx](http://palma.ine.cl/demografia/SELECCIoN_INDICADoRES.aspx).

<sup>84</sup> There could also be legal factors involved. For example, in 1998 the filiation law was amended, putting an end to the difference between legitimate and illegitimate children. In theory, this should also contribute to a reduction of the value of marriage, for marital children lose their legal advantage over extra marital children. Nonetheless, no changes are observed near to such date.

<sup>85</sup> See note 53.

<sup>86</sup> See also Kiernan and Mueller (1998) and Stevenson and Wolfers (2007).

TABLE No.3: MARRIAGES WITH DIVORCED PARTIES, 2004-2009

Year	Total marriages	One of the parties is a divorcee						Both are		She and/or him	
		She		Him		She or Him					
2004	53.245	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
2005	53.599	26	0,0%	106	0,2%	132	0,2%	0	0,0%	132	0,2%
2006	57.980	410	0,7%	1.186	2,0%	1.596	2,8%	37	0,1%	1.633	2,8%
2007	57.649	1.263	2,2%	2.326	4,0%	3.589	6,2%	147	0,3%	3.736	6,5%
2008	55.923	1.710	3,1%	2.863	5,1%	4.573	8,2%	264	0,5%	4.837	8,6%
2009	55.668	2.765	5,0%	5.097	9,2%	7.862	14,1%	746	1,3%	8.608	15,5%
<b>Total</b>	<b>334.064</b>	<b>6.174</b>	<b>1,8%</b>	<b>11.578</b>	<b>3,5%</b>	<b>17.752</b>	<b>5,3%</b>	<b>1.194</b>	<b>0,4%</b>	<b>18.946</b>	<b>5,7%</b>

Source: Personal elaboration based on information provided by the Civil Registry.

But the probability of divorcing could also affect the marriage rates in a second way, for it facilitates to put an end to marriage in case of failure, making less definitive –and therefore, so much easier- the decision of marrying. In economic terms, we could say divorce “reduces the exit cost”, generating incentives to marriage<sup>87</sup>. Plus, there could be people that, granting it a quality of a symbolic event, simply did not want to marry while divorce was not approved.

Table No. 4 shows, for each year, the total marriages, the expected total of the 1989-2004<sup>88</sup> period’s observed trend was maintained, the difference between the effective marriage rate and the expected marriage rate according to the trend (increase over trend) and the amount of marriages with at least one divorced spouse. As observed, the amount of marriages with a divorced spouse is considerably lower than the increase of marriages over the tendency, for which there is a part of the marriage increase that is not due to second marriages<sup>89</sup> and that may be due to among other things, to the fact that the possibility of divorce made easier the decision to marry. Furthermore, it is also possible that some of the marriages corresponding to re-marriages had also been encouraged, in some way, by the “exit costs reduction” of marriage.

The fact that just after the Divorce Law marriages increased –even not taking into account second marriages does not imply that this tendency change is necessarily due to law, because it could be related to some other factor present at the same date. Considering this

<sup>87</sup> We should recall that marriage is an institution not only related to love, for among other things, it has additionally, other important effects such as economic or upon succession. For example, lets imagine the situation of a man who, among other things, has a child and a house and as couple a women who is different from his child’s mother. In case this man marries and then dies, his house is left as heritage in equal parts for his wife and child. If this man foreshadows a minimum probability of separation, with the purpose of protecting his child’s inheritance, he may not be willing to marry as long as a secure marriage bond dissolution mechanism exists.

<sup>88</sup> Corresponding to a constant decrease rate of little more than an annual 4%.

<sup>89</sup> We shall use the term second marriage for the event any of the new spouses have been married before. That way, remarriage could be the first marriage for someone marrying for the first time with a divorcee or could for someone its third, forth and so on marriage.

TABLE No. 4: MARRIAGES IN RELATION TO TREND, 2004-2009.

Year	Total marriages	Expected according to trend	Increase over trend	Marriages with at least one divorcee
<b>2004</b>	53.245	-	-	0
<b>2005</b>	53.599	51.084	2.515	132
<b>2006</b>	57.980	49.011	8.969	1.633
<b>2007</b>	57.649	47.022	10.627	3.736
<b>2008</b>	55.923	45.114	10.809	4.837
<b>2009</b>	55.668	43.283	12.385	8.608

*Source:* Personal elaboration based on information provided by the Civil Registry.

possibility, it will be statistically controlled in section 5.1 by a series of factors which may increase marriage rates, with the purpose of evaluating if the increase of marriage may be due to any of them.

It is important to note that both divorce effects on marriage –the one of allowing married but separated people to remarry and the one of “reducing the exit-costs” – will have a temporal and a permanent component. The temporal effect corresponds to such where- at the moment of the law’s enactment- there was already a group of people which before the law were eager to put an end to their marriages with the purpose of remarrying and a group of people refusing to marry until a safe option to annul the bond existed, which implies there will be a stock effect. But at the same time, year to year, there would be a flow of people which could marry only because they were able to get divorce without mutual agreement or due to the JAC, or which were encouraged to marry due to the existence of divorce. Naturally, it should be expectable for this flow to be significantly lower than the stock, which with the increase of marriages should become less relevant with time. Regarding the analysis at section 5.1, it should be taken into consideration that, because of the available data, in none of both cases is it possible to identify the temporal and permanent effects. Only with the passage of time and once a new long-term equilibrium in marriage rates is reached, the temporal and permanent components of these effects may be deemed.

In relation to the distribution of marriages entered into in Chile according to their property matrimonial regime, it may be found that separation of property is gradually replacing the marital partnership regime, passing from nearly inexistent in 1970 to be preferred in 44% of the marriages in 2009, while marital partnership is present in 54% of them. On the other hand, the partnership of gains regime, created in 1994 is scarcely preferred: under 3% of the total marriages in the country have decided for this system.

Historically, among the highest socioeconomic boroughs the percentage of marriages under the separation of property regime has more than doubled the ones of lower socioeconomic levels. This could be related with the fact that the marital partnership is legally established by default, for

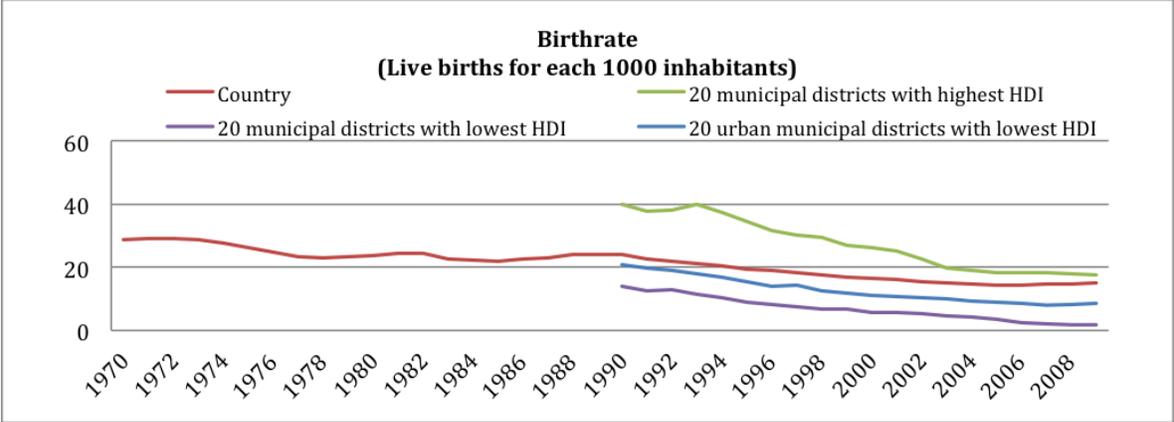
which it could be expected that people with less educational levels, being less informed, tend to conform with the residuary regime. At the same time, the partnership of gains regime is also more popular in boroughs with higher HDI. Nonetheless, in none of the cases relevant differences are observed regarding the tendencies among this group of communes. Changes are neither observed near to the date of the enactment of the divorce law in Chile.

**4.2.3. Birth-rate.**

Just as divorce is intrinsically related to marriage, marriage is to the birth rate. In fact, the Civil Code establishes that “procreating” constitutes, besides living together and providing each other mutual help, one of the purposes of marriage. For this, it is pertinent to study the birth rate tendencies, aiming to assess if such could have been affected by the enactment of the Divorce Law.

Between 1970 and 2009, as Figure No.7 shows, the country’s birth rate reduced nearly to its half, going from a little bit less than 30 live births each thousand inhabitants to only 15. This is still considerably higher than the cases of most developed countries: for example, in 2009 the United States has a birth rate lower than 14, the European Union one less than 10 and

FIGURE No. 7



Source: Personal elaboration based in data provided by the Civil Registry and the NSI.

Japan didn’t even get to 8 live births for each thousand inhabitants. Notwithstanding this, if we compare Chile to its South American neighbors, we may find that it is the second country with fewer births, only overpassed by Uruguay, which is slightly under 14 live births for each thousand inhabitants. Argentina, Brazil, Peru, Colombia, Venezuela and Ecuador are between 18 and 21, and when considering Bolivia it arises to nearly 26<sup>90</sup>.

<sup>90</sup> CIA World Factbook, 2009.

According to the classification of boroughs per HDI, the birth rate is higher in the group of higher socioeconomic level<sup>91</sup>, but the trends are relatively similar, save for in the 20 boroughs with the highest HDI the decrease of the birth rate between 1990 and 2009 has been more abrupt. Besides, if the differences between the rural and urban boroughs are analyzed, it may be found that in 1990 the birth rate was four times higher in urban boroughs and more than 28 times in 2009, which may be consequence of a strong rural-urban migration by the hand of women of child-bearing age.

The reasons for the decrease of the birth rate in all groups are strongly related to the reasons of the decrease of marriage rates. The incorporation of woman to work reduces the available nursing time, including the possibility of reducing the amount of wanted children. Plus, the possibility of access to contraceptives allowed a better regulation of the number of children. On the other hand, the postponement of marriage leads, in various occasions, to the postponement of maternity. Lastly, demographic factor are involved, for the increase of life expectancy has relatively increased the denominator of the rate calculation.

None of the group of boroughs presents any relevant changes at the moment the divorce law was enacted in Chile.

Consequently with the dropping of the marriage rates, the percentage of extra-marital born children has had a strong increasing tendency during the period, going from a 24% by the early seventies to a 67.2% in 2009. The latter is huge when compared to developed country figures: Sweden (55.4%), France (45.2%), England (42.3%), Canada (36.3%), United States (34.6%), Germany (28%) and Italy (14.9%)<sup>92</sup>, and even if compared to Mexico (55.1%)<sup>93</sup>. The previous is clearly related to the fact that Chile has a higher fraction of its population cohabitating extra-matrimonially. It is important to note that the fact that less than a third of children born in 2009 had done it within marriage does not imply that only that fraction lives with both of its parents. For example, from the 2009 CASEN it has been found that, from children of less than 1 year, 44% live with both of its parents in a home in which one of them is head of the household and, presumably, at least another 9% lives with both parents in a home where other person is the head of the household<sup>94</sup>.

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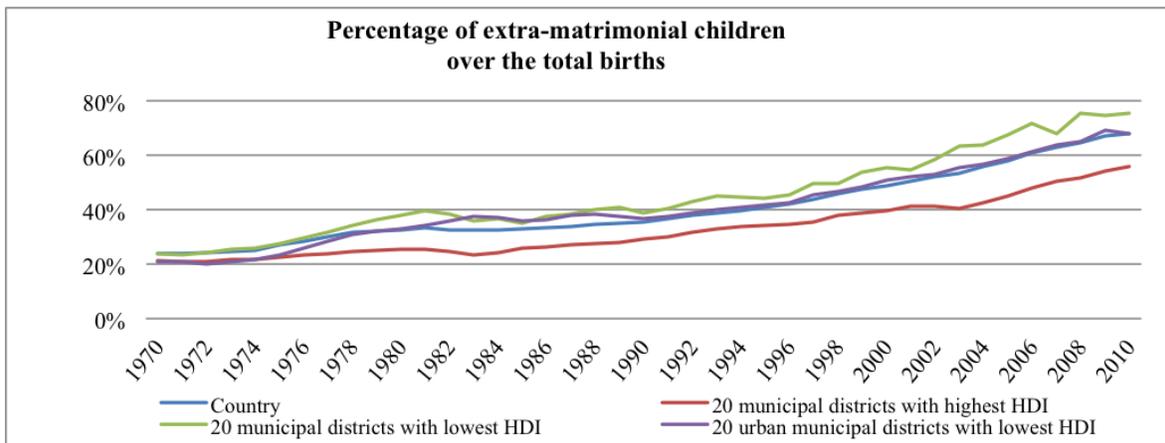
<sup>91</sup> This results contrasts the known fact of which fertility (amount of children per adult women) is higher among people of less resources. A possible explanation to this is that women, specially those living in rural zones, when having their children decide to move to boroughs of more resources because they present better health facilities, additionally registering them in those municipal districts. On the other hand, there is a strong youth country side-city migration, which particularly implies that those on fertile ages move to municipal districts of higher HDI.

<sup>92</sup> Stevenson and Wolfers (2007)

<sup>93</sup> OCDE (2008)

<sup>94</sup> Personal estimations based in the 2009 CASEN. The CASEN question on kinship is always in relation to the head of the household, for it is not possible to know if the children of people not being head of the household actually live with both parents. Such 9% of newborns living with both parents but where other person is head of the household corresponds to one year old minors who are grandsons of the head of the household where a son-in-law or daughter-in-law also lives. It is possible that such newborns being grandsons of the head of the household are not sons or daughters of one of the children of the head of the household who are living at the household or of the son-in-law or daughter-in-law living at the household, but of others, nonetheless being this a reasonable approximation. Newborns being children of other relatives or non-relatives also living in the house with both parents should be added, but we have no way of making an estimation on this.

FIGURE No. 8



Source: Personal elaboration based in data provided by the Civil Registry and the NSI.

Boroughs with higher HDIs have a considerably lower percentage of children born extra-matrimonially than the rest of the communes of the country, becoming this difference, additionally, more pronounced as the time goes by (going from a 2.6 to 12.8 percentage points in the period). When comparing between rural and urban areas, the difference is lower, for rural areas have, in average, a percentage of extra matrimonial children 3 points higher than urban boroughs. In fact, between 1970 and 1977, proportionally there were more extra-marital newborns in the urban areas.

Finally, we have to remark that none of the groups present any significant changes around 2004. On the other hand, it might have been expected that with the new Filiation Law, which ended the distinction between legitimate and illegitimate children, extra matrimonial newborns would have relatively increased, considering that the incentives to marry because of the legal status of “legitimate” granted to a child were over. Nonetheless, no changes are appreciated around 1998, date in which such law was enacted.

#### 4.2.4. Correlations.

Table No. 5 shows the correlations between the principal variables analyzed in the previous section and some other borough-level variables (HDI, percentage of the population, who is atheist, agnostic or without a religion and rural percentage, both according to the 2002 Census).

TABLE No.5: CORRELATIONS

	Variable	Marr. rate	Div. rate	Null. rate	Birth rate	HDI	No religion	Rural pop.
Complete period: 1990-2009	Marriage rate	1	/	0,78	0,54	0,05	0,04	-0,08
	Nullity rate	0,78	/	1	0,44	0,09	0,09	-0,1
	Birth rate	0,54	/	0,44	1,00	0,25	0,26	-0,29
	HDI	0,05	/	0,09	0,25	1	0,47	-0,59
	Atheist, agnostic, no religion population (2002 municipal districts %)	0,04	/	0,09	0,26	0,48	1	/
	Rural population (2002 municipal districts %)	-0,08	/	-0,1	-0,29	-0,59	/	1
Pre-divorce: 1990-2004	Marriage rate	1	/	0,79	0,58	0,04	0,04	-0,08
	Nullity rate	0,79	/	1	0,48	0,1	0,10	-0,11
	Birthrate	0,58	/	0,48	1	0,24	0,24	-0,28
Post-divorce: 2005-2009	Marriage rate	1	0,26	0,09	0,32	0,37	0,23	-0,44
	Divorce rate	0,26	1	0,12	0,09	0,08	0,07	-0,11
	Birthrate	0,33	0,09	0,07	1	0,31	0,32	-0,35
	Nullity rate	0,09	0,12	1	0,07	0,08	0,08	-0,09

Source: Personal elaboration based in the data provided by the Civil Registry, NSI, Mideplan and PNUD (2004)

Before going further into analysis, it is indispensable to recall that the existence of a correlation does not imply causality in any sense, but only that the variables move along together, which could be produced, for example, by a third variable which affects, at the same time, two correlated variables.

As observed, the marriage, nullity and divorce rates are positively correlated. This may be simply due to the fact that as more marriages exist, there is more people enabled to annul or divorce, but can also be due to the fact that in those boroughs in which a higher value is granted to the formal marital status, there will also be, at the same time, more marriages, annulments and divorces. The birth-rates are also positively correlated with those of marriage, which appears natural in a certain way, for as far as we know there are people who marry *to* have children and people who marry *because* they've had children.

Divorce rates have a positive correlation with the HDI and the percentages of people who have no religion, and a negative correlation with the percentage of the population living in rural areas, but none of these correlations are of a relevant magnitude.

#### 4.2.5. Conclusions of the macro level analysis

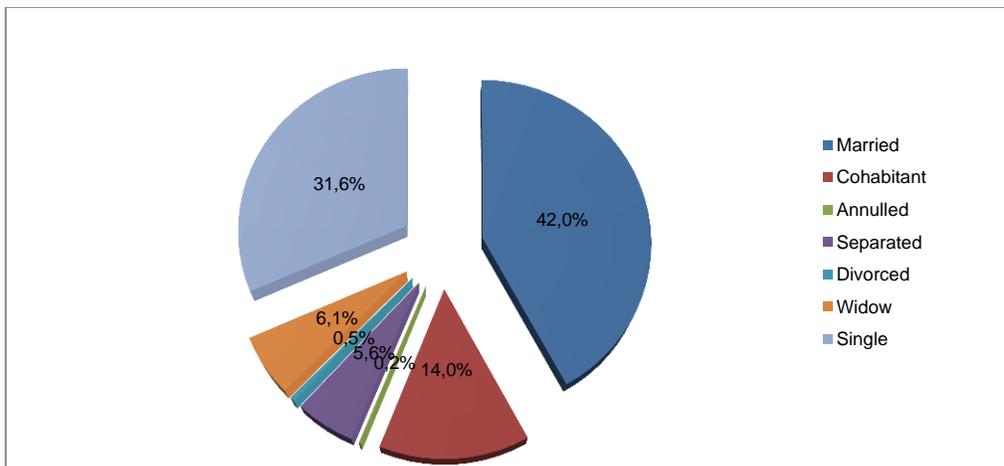
As a summary, below we present this section's principal conclusions regarding divorce.

- After the Divorce Law, the marital nullity rates became negligible, which indicates that divorce replaced nullities as a mechanism to end marriages. At the same time, the amount of breakups in which bonds were officially dissolved (this is, divorces plus nullities) strongly rose up after the law, suggesting that divorce made access to an official marital breakup radically easier.
- The divorce rate had an increasing trend since the New Civil Marriage Law was enacted until 2009, slightly decreasing in 2010. The amount of divorces in Chile scarcely differ from divorces in other countries, which is quite amusing considering that for when the new law entered in force, a stock of couples willing to divorce already existed.
- Nearly a fifth of the total divorces correspond to marriages that did not have children, and a third to marriages with an only child. The duration of marriage increases with the amount of children and seems not affected by the children's genre composition.
- While observing divorces processed by the Judicial Assistance Corporations, it may be found that 57% of the divorces have been for cessation of cohabitation, with mutual agreement, 42% for cessation of cohabitation unilaterally requested and a minimum fraction for fault.
- The divorce rates do not show important differences between boroughs of different socioeconomic levels, though they are higher in urban areas. Nullities, on the other side, were clearly more frequent in boroughs of a higher socioeconomic level. Therefore, the available information reveals that divorce has made more equal the access to an official breakup.
- The marriage rate has a strong decreasing tendency from the early nineties until year 2005, reaching values significantly lower to the ones presented by developed countries, which may be explained, among other things, by a higher presence of non-marital cohabitation. After 2005, the marriage rate changed its tendency, increasing a little and stabilizing itself. Only a part of said "over the trend" increase is due to the fact that the enactment of the divorce law had allowed several thousand married but separated people to remarry.
- Both the distribution of marriages according to patrimonial regimes and the birthrate and percentage of extra-marital newborns don't show any trend changes after the Divorce Law enactment.

### 4.3. Individual level analysis

This section shows the analysis of some characteristics of the divorced population in respect to the rest of the country's population, according to the 2009 CASEN survey<sup>95</sup>. To understand who are divorced at a determined moment it is necessary to have into consideration that the composition of the divorced population will depend on the propensity that people may have to marriage, to separation, and after, to divorce, besides the propensity to the search of a new couple. This is because not everyone has equal possibilities to carry out each one of these steps and, according to CASEN, each of them leads to a different marital status<sup>96</sup>.

FIGURE No.9: DISTRIBUTION OF THE ADULT POPULATION PER MARITAL STATUS



Source: Personal elaboration based in the CASEN 2009.

In the first place, it is relevant to analyze the size of our group of study. Figure No.9 shows the distribution of adult population according to their marital status. The question made in CASEN survey mixes legal classifications (married, annulled<sup>97</sup>, divorces, widow and single) with other states that don't have a legal status (cohabitants and separated). This leads to different classifications non-mutually exclusive (for example, a person may be legally married and separated, or divorced and cohabitant), with which people of a same category may be classified in different groups, making of the analysis a harder task. In this case, they who live with a couple but are not married (including single people, annulled, widows, separated or divorced) were classified as cohabitants, but not all married people living without a couple were classified as separated. In any case, because people

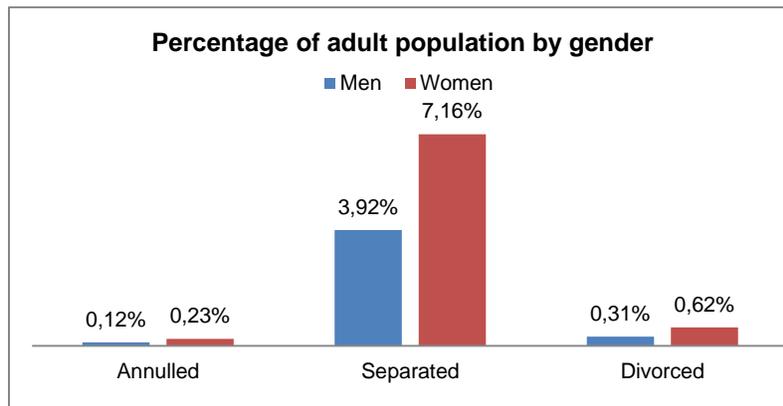
<sup>95</sup> Because they have been deemed based in a sample, this data has an error margin, but because of the sample's magnitude (nearly 250,000 people, corresponding to more than 70,000 Chilean households), this is very small. The margin error may vary for each question, but the estimated for the complete sample is less than 0.0024%. All data presented in this section has been estimated using CASEN's regional expansion factors, calculated based in the 2002 Census.

<sup>96</sup> The composition of the divorced population will depend also on the migration and death rates, which for the purposes of this work and because of simplicity motifs, we will assume as even among the different groups.

<sup>97</sup> Strictly speaking, "annulled" is not a marital status because once a marriage is annulled the former spouses went back to being single.

auto categorize themselves in the offered categories, it may be proposed that they chose which is the closest to the perception they have of themselves, with which their answer would be somehow similar to a cultural definition of the marital status.

FIGURE NO.10: ANNULLED, SEPARATED AND DIVORCED.



Source: Personal elaboration based in the 2009 CASEN.

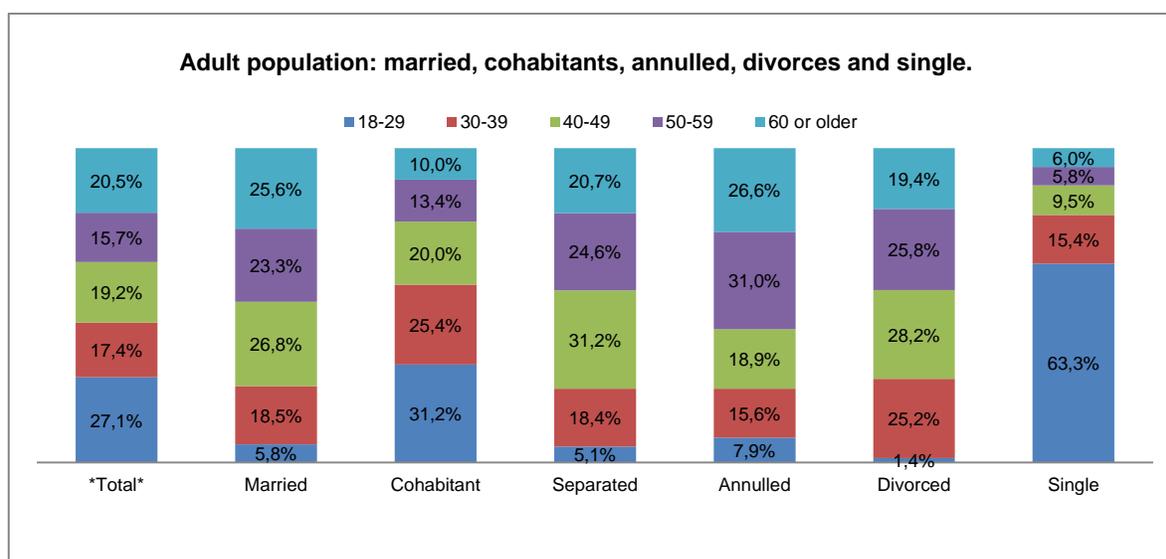
The percentage of adult divorced population (not re-married or not living with a new couple) is of a 0.48%. The number is low if Chile is compared with developed countries, where it fluctuates between 5 and a bit more than a 10%<sup>98</sup>. Notwithstanding this, it is highly probable that the divorces of the whole accrued stock before the 2004 law have not been carried on, with which it should be expectable that the divorced portion of the population increases in time, until reaching a balance.

Nonetheless, it should be noted that even though the possibility of annulment has been available forever, and the one of divorce only for five years, the amount of divorces has already overcome the annulments for pretty more than its double (0.18%), which is another sign expressing that, on a country level, upon marriage failure, divorce is a easier exit than nullity. However, it should be taken in mind that, because the annulled have had more time than the divorced since their respective breakups, it is possible that the first have been able to couple up in a greater way.

By comparing the differences between genre distribution according to marital status corresponding to couple breakups, i.e. annulled, separated and divorced, it is observed that in the three cases there is nearly twice the women than the men. It was reviewed above that after a *divorce*, men tend to marry in a greater way than women and, now, this information shows us that, more in general, men *couple up* in a greater way than women after a break up, or at least, they do it faster. By the way, as said before, this is coherent with the literature and evidence in general for

<sup>98</sup> Stevenson and Wolfers (2007). It is to be noted that the data is slightly different, because for the international case those cohabitating with another person actually are considered divorcees.

FIGURE No. 11: DISTRIBUTION OF THE MARITAL STATUS GROUPS PER AGE BRACKETS.



Source: Personal elaboration based in the 2009 CASEN.

Chile<sup>99</sup>. The reasons for this could be related, among other factors, with the fact that after the separation the children, acknowledged as one of the biggest difficulties to start again a stable relationship<sup>100</sup>, generally stay with the mother.

Regarding the age distribution of the different marital status groups<sup>101</sup>, we may observe that mostly the totality of divorced people have at least 30 years, which is related to the fact that to divorce, firstly they need to marry (less than a 6% of people under 30 years has done so), then separate, and only after divorce, after one or three years according to if it is by mutual agreement or unilaterally requested.

Regarding the distribution of these groups according to socioeconomic related variables, it may be appreciated that the divorced group presents a strong bias towards the quintiles of higher income<sup>102</sup> and towards the groups with a higher educational level. This indicates that even when on a borough level no big differences may be observed on a socioeconomic level, they exist on an individual level, with which divorced would not be homogenously distributed within boroughs<sup>103</sup>.

<sup>99</sup> See CEOC (2009)

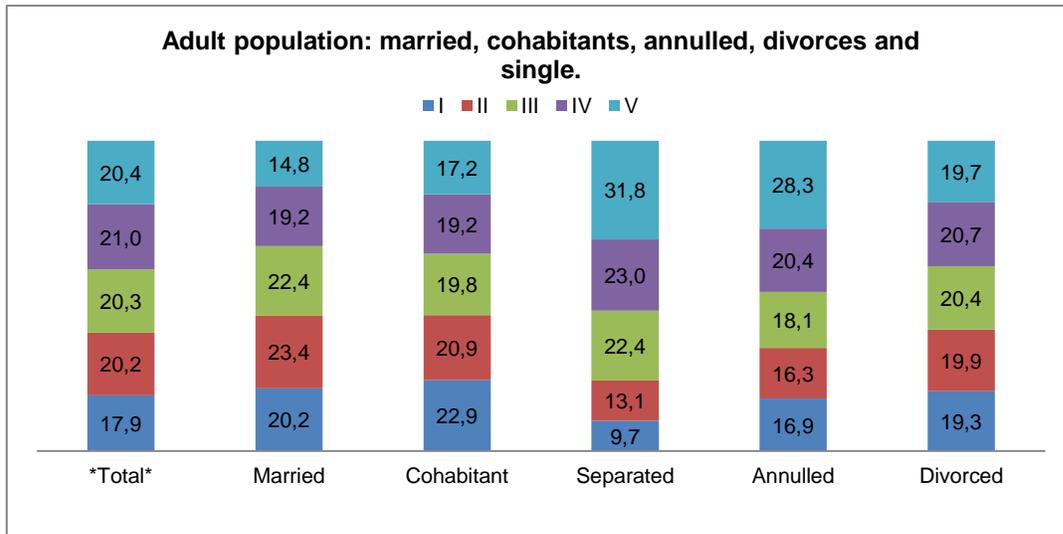
<sup>100</sup> According to CEOC (2009), children, with more than a 42% of the answers, lead the list of "main problems to restart a stable couple relation"

<sup>101</sup> For this analysis and the following, the group of marital status of widows has not been included because of its low relevance for this study.

<sup>102</sup> Autonomous income, on a national level.

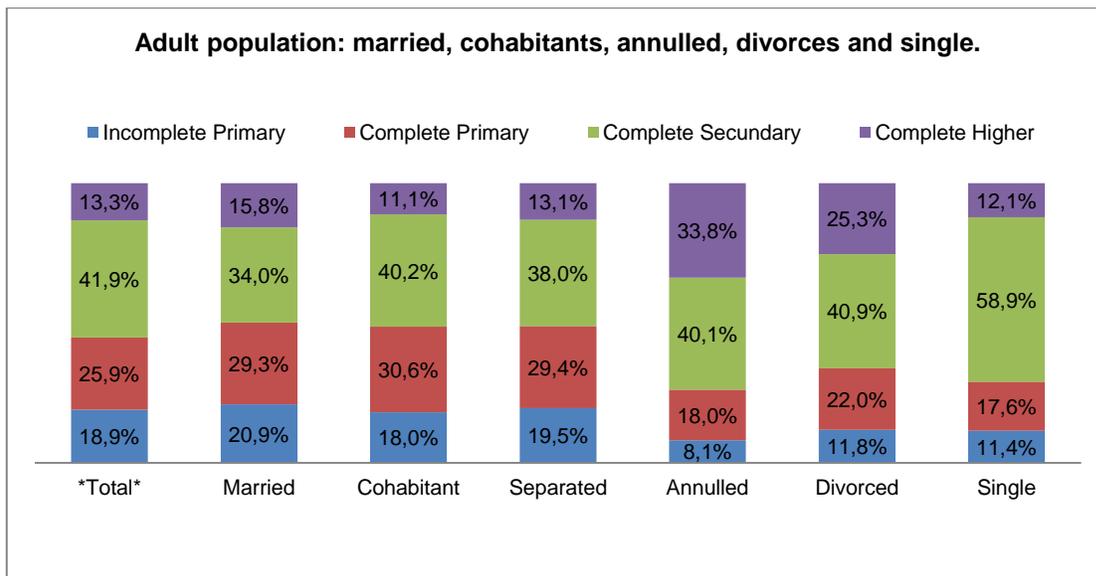
<sup>103</sup> This could also be the case if the divorcees of municipal districts with lower socioeconomic level were more prone to remarrying, but the data refutes this hypothesis: between 2005 and 2009, within the twenty boroughs with lower HDI, the amount of people who married, in comparison to the amount of divorces made, is less than such relation in the twenty municipal districts with higher HDI (0.14 vs. 0.2).

FIGURE No.12: DISTRIBUTION OF THE MARITAL STATUS GROUPS PER INCOME QUINTILE.



Source: Personal elaboration based on the 2009 CASEN.

FIGURE NO. 13: DISTRIBUTION OF THE MARITAL STATUS GROUPS PER EDUCATIONAL LEVEL



Source: Personal elaboration based in the 2009 CASEN.

But it should be noted that this does not necessarily imply that people of higher socioeconomic level tend to separate in a greater way, for within separated people – who might have been married or mere cohabitants- the bias is directed towards the lowest socioeconomic

levels, and if separated and divorced are analyzed altogether, there are no clear biases<sup>104</sup>. In fact, even when there is international evidence suggesting an inverse relation between education and the probability of separation—something that may be due to the fact that education provides tools to solve conflicts or to the fact that the lack of income implies additional tensions—, the available information for Chile is not conclusive<sup>105</sup>.

To analyze the distribution of divorced people on a socioeconomic level, various factors have to be considered. In the first place, and as observed on a borough level<sup>106</sup> and on an individual level while controlling for age<sup>107</sup>, marriage is less frequent among people of less income and lower educational level, implying that the population susceptible to divorcing is lower among the lowest socioeconomic levels. At the same time, education may be related to a higher valuation of a formal marital status, which may explain that they who are more educated tend to marry more and to divorce more once they have separated.

On the other hand, even when the JAC carries out divorces gratuitously for people of low income<sup>108</sup> and the procedure is neither too cumbersome nor too long<sup>109</sup>, it is possible that separated people with lower educational level are not well informed of this and don't concur to JAC, whether because they ignore their methods or because they ignore how the law itself works to get a divorce.

For those unable to access free justice granted by the JAC, a divorce costs as a minimum \$150,000 Chilean pesos<sup>110</sup> for the cases where there is mutual agreement and no compensations are demanded. In the unilateral case, the lowest prices for the demanding party arise to \$350,000 without compensations and more if there are any (sometimes, a commission over the compensation is charged, for example, of a 15%). For the demanded party, on the other hand, defense may cost from \$180,000 without compensations, price that increases according to the amount of the compensation<sup>111</sup>. This way, the price of a divorce may constitute a significant expense after the separation for a middle class couple, which explains the bias towards the higher income quintiles in the divorce distribution.

In any case, it must be remarked that the distribution of the divorcees group according to level and education income is clearly more even than that of the annulled group, confirming, on an individual level, which was observed on a communal level. For example, the difference between the

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<sup>104</sup> The distribution of separated and divorcees jointly is as follows: incomplete basic 18.9%, complete basic 28.8%, complete secondary 38.2% and complete upper secondary 14%.

<sup>105</sup> Herrera and Valenzuela (2006), pp.240-242.

<sup>106</sup> The HDI considers educational level.

<sup>107</sup> Figure No. 13 shows that in the married group there is, in respect to the rest of the country, a relatively high amount of people who did not complete secondary education (incomplete basic and complete basic). But this is due to the fact that the marriage rate has had a strong negative trend, while the level of average schooling has been strongly positive. Thus, when differenced per age groups it is found that married people have a higher educational level than the country's average (with the exception of the group below 30, which is probably because people drop studies *because* they marry).

<sup>108</sup> With a per capital income below 6 UF in urban zones and 5.5 UF in rural zones, beneficiaries of State's subsidies and other special cases ([www.cajmetro.cl](http://www.cajmetro.cl)). Nonetheless, in practice few are the cases in which someone is effectively impeded of accessing CAJ services. An UF is nearly 45 dollars.

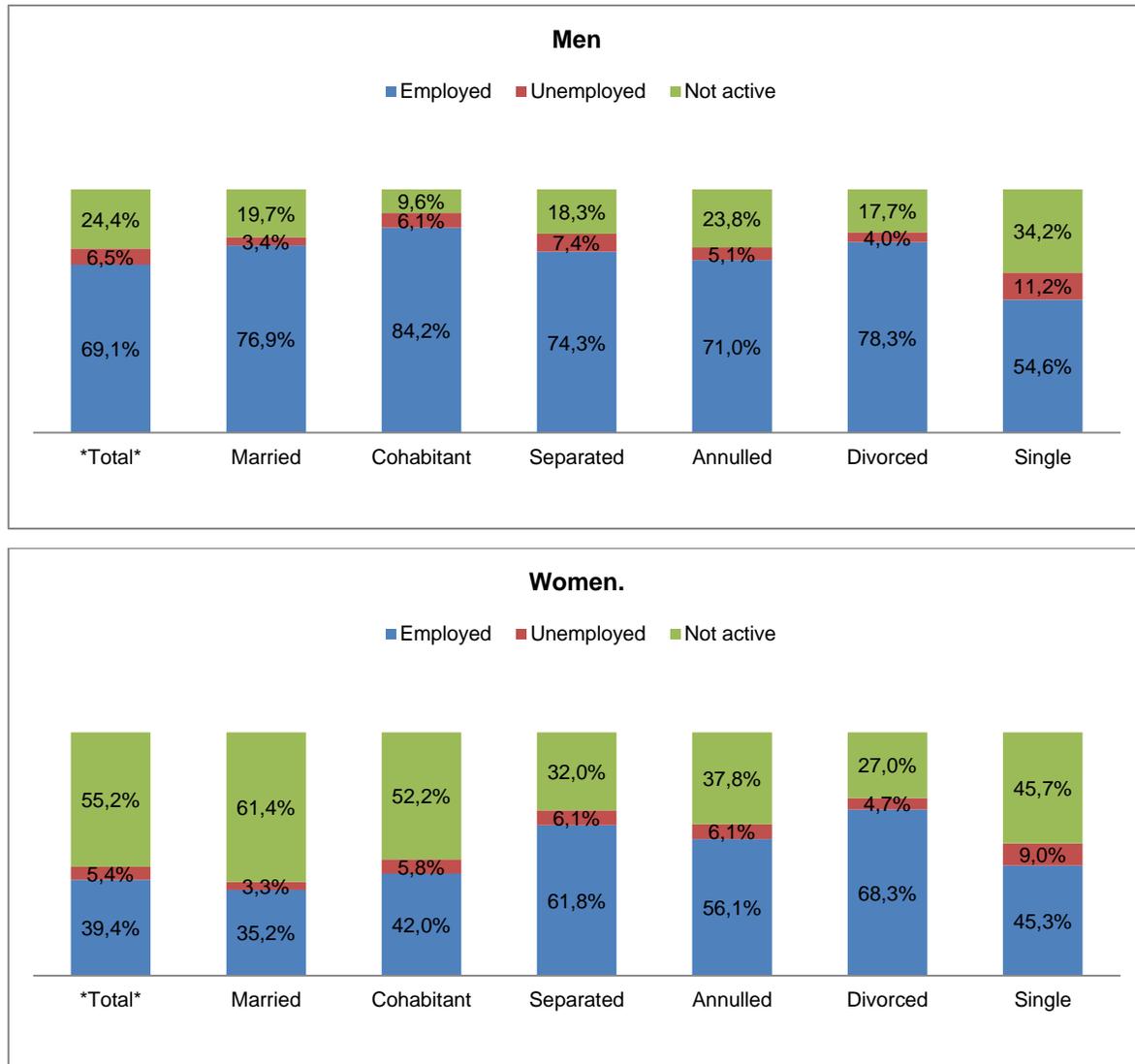
<sup>109</sup> The total time period since the first visit to the CAJ until the divorce sentence is pronounced is, in general, close to five months in the case of mutual agreement and eight months in the case of unilateral divorce.

<sup>110</sup> Around 500 pesos are equivalent to one dollar.

<sup>111</sup> Personal estimations on the web, up to October 2010.

representation of quintile V and quintile I goes from 3.3 times between the annulled to only 1.7 among the divorcees. This way, definitively divorce has made more equal the access to a marital breakup with bond dissolution.

FIGURE No. 14: DISTRIBUTION OF THE MARITAL STATUS GROUPS PER LABOR ACTIVITY



Another important variable is the labor activity status among the different marital status. This variable is especially relevant to this research, for relying on a paid job produces an economic independency that may be crucial to the moment a divorce is produced, and therefore, it may affect this decision<sup>112</sup>

Among men (Figure No. 14), the group of divorcees presents a percentage of active workers slightly higher than the country's total. But among women this difference is radicalized, for the percentage of working divorcees is 68.3% against a 39.4% of the country's total.

<sup>112</sup> For the Chilean case, see for example Vignau (2010)

This may be related to the fact that divorced women are forced to looking for a job to subsist, and many times, to maintain their children too. Contrarily, it is possible that working women are the ones who divorce in a greater way, for working gives them a independency that allows them to *decide* if they are willing or not to remain married<sup>113</sup>.

As a summary for this section, according to CASEN survey the 2009 divorcees group would have been composed, in comparison to the rest of the country, by more women, it would have had a bias towards the higher income quintiles, would have presented a higher educational level and a higher labor activity level. Regarding the differences of composition between divorcees and annulled, the principal thing is that, although both groups present a bias to the higher socioeconomic level –whether measured per income quintile or per educational level- from this perspective, the divorcees group are significantly more similar to the rest of the country.

## 5. STATISTICAL ANALYSIS

In this section it will be evaluated, using statistic methods, some possible effects of the new Civil Marriage Law.

In the first place, it will be analyzed if the increase of marriage rates observed right after the new Civil Marriage Law –maintained even when the marriages in which at least one of the parties was a divorcee are discounted- (section 4.2.2) may be attributable, statistically, to another factor.

In second place, the question on whether after a separation divorce leaves the weakest spouse more protected, who usually turns out to be women, will be analyzed. Particularly, in a sample of separated women, the effect of being divorced over the received transfers made by the ex-couple will be analyzed.

### 5.1 Effect of the divorce law over the marriage rates

We have already seen that the enactment of divorce allowed, between 2004 and 2009, the re-marriage of over 19,000 people who already had been married before, but we have also seen that this marriages are not enough to explain the totality of the increase that affected the marriage rate in respect to its trend, and that the difference could be due to, for example, the fact that divorce makes the marrying decision easier.

The purpose of this section is to analyze if this tendency upturn in the marriage rate, observable since 2005, may be statistically attributable to the new Civil Marriage Law, which we'll assume as an exogenous shock. The “determinants” for marriage in Chile are not intended to be

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<sup>113</sup> The idea that “if the woman works more it is more likely for the couple to separate” is very popular in Chile: for example, according to CEP (1995), in 1995 the 55% of the population believed that such statement was true. This could be associated to certain beliefs of a traditional or sexist kind, as for example that the working woman, because she has a higher sociability outside the household, is more prone to meeting another person and breaking up her marriage, or that the family is resented if the woman works.

explained, but only if the increase of marriages is maintained by controlling for some variables. Naturally, we do not count with a certain knowledge of all the factors affecting marriage rates and, moreover, we do not have most of the data we would want to carry out a complete analysis, but the fact of controlling some basic variables allows getting closer, in some way, to what would be the effect of the Divorce Law over marriage rates.

In this analysis we have used the information of the Chilean boroughs for the 1990-2009 period<sup>114</sup>. In its majority, this is census data –non-sampling-, which is an advantage, for it reduces the estimations-related variance. The effect of a law over marriage rates was estimated, including a series of control variables, through the method of Ordinary Least Squares (OLS), with robust standard errors and additionally, through estimations with fixed-effects for each borough.

The estimations indicate that, besides allowing second marriages for divorcees and discounting by the control variables, between 2005 and 2009 the law had a positive and robust effect over the marriage rates. Plus, the results of the Chow test indicate that there would have been a structural break in the marriage rates after 2004.

### **Dependent variables**

Estimations for two dependent variables were made:

#### *Marriage rate*

Amount of marriages celebrated each year in a borough for each thousand inhabitants. With this variable we will study the total effect of the divorce law over marriage rates.

#### *Net marriage rate*

Amount of marriages yearly entered into in a borough minus the amount of marriages where at least one of the parties was a divorcee, for each thousand inhabitants. This is equivalent to the rate of marriages entered into among single people<sup>115</sup>, and will be useful to study the net effect of the Divorce Law upon marriages, discounting those that correspond to remarriages.

### **Independent or control variables**

Here are presented independent or control variables utilized in regressions. Some of them change with time but not among boroughs (temporal), other change among boroughs but not with time (spatial) and others change with time and among boroughs (temporal and spatial). It must be

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<sup>114</sup> The panel had 331 municipal district instead of the 346 which the country actually has. The slight difference is due that the data is organized per office of the Civil Registry and were added to a municipal district level, but not all municipal districts have a Civil Registry office. Besides, due to administrative changes, some offices changed the municipal district to which they belonged, and it was decided to maintain them in the original borough for analysis purposes.

<sup>115</sup> Annulled are also included here, for they have the marital status of "single", and also the widows.

said that along this research, multiple specifications were tested, including these and other variables, and the results always remain in substance unchanged.

#### Trend (*trend*)

Temporal variable of trend, which has a value of 0 in the initial year of 1990 and increases one unit each year. This variable is intended to grasp the effect of a group of phenomenon and cultural changes which have contributed to a reduction of the marriage rate in the modern society, such as a higher social acceptance of cohabitation, the incorporation of women in the labor world, the generalization of oral contraceptives and the postponement of marriage, among other things<sup>116</sup>.

Diverse specifications including variables related to these factors were also tested, for example female schooling, the percentage of marriages entered into in a determined age or the per capita GDP (in pesos and in logarithms), but none showed interesting results, for because of a high correlation with the trend variable<sup>117</sup>, they would just take part of its effect. Because of this, it was preferred to include only the trend variable and consider that this comprises a series of changes and factors related to modernization.

#### Law (*law*)

Dummy temporal variable with a value of 1 for years after 2004 (2005 to 2009<sup>118</sup>) and a value of 0 for the rest of the years<sup>119</sup>.

#### Percentage of the population between 20 and 49 years (*pc\_20a49*)

Temporal and spatial variable corresponding to the percentage of population that, yearly has between 20 and 49 years. This variable corresponds to NSI estimations and measured on a province level opposite to a borough-level, for the margins of error of communal estimations are quite high. This variable is intended to control the effects of demographic changes, and it may be hoped that, as people tend to marry being between 20 and 49 years old, a higher percentage of the population in such age range increases the marriage rate.

#### Unemployment (*unemployment*)

Variable corresponding to the percentage of unemployed workforce, based to estimations by the NSI on a regional level, from year to year<sup>120</sup>. Specifications with the year's average

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<sup>116</sup> See section 4.2.2.

<sup>117</sup> These variables have a correlation with the tendency of more than 0.9 of magnitude.

<sup>118</sup> Even when the new Civil Marriage Law was enacted in 2004, this variable doesn't include such year, because the law entered into force on November 18, for that it almost wasn't in force in 2004, even more when considered that neither marriage nor divorce are immediate decisions. In any case, the specifications that included 2004 obtained equivalent results.

<sup>119</sup> It may be sustained that the enactment of the law may have been anticipated and that, therefore, its effect in marriages may have started before than the law was actually approved. Even when this is not to be dismissed, it is to be noted that the process of the divorce law in Chile took so much time (90 years since the first draft, 9 since the first attempt once democracy was regained and 7 since approved for the first time by the Chamber of Deputies), that is does not seem easily foreseen. On the other hand, and from another perspective, the enactment of the law may have acquired a symbolic meaning as event for those waiting for a reduction in the exit costs to marry.

unemployment level were tested and with the level of the December-February period, for, in general, the decision of marriage is taken previously to those months, and the unemployment of the beginning of the year may operate as a predictor of the year's economic performance. The results in both cases were similar, but it was decided to present those of the December-February unemployment, for they deliver more significant results.

Unemployment pretends to grasp the effect of the economic cycle. On one hand, it is normal to celebrate a marriage with a feast, for it may be expected that the positive shocks to the economic cycle increase the amount of marriages. On the other hand, negative shocks to the economic cycle may make the economic benefits of joining two households in one more evident, generating incentives to marriage.

#### Population (*population*)

Estimated yearly population of a borough. Following the economic theory of the search of information, it may be expectable that in more populated boroughs the costs of finding a couple were lower, which would increase the amount of marriages.

#### Initial marriage (*initial\_mar*)

The 1990's marriage rate in a borough. If there was to be certain inertia in the marriage rates per boroughs, it may be expectable that this variable positively affects the marriage rate from year to year.

#### Human Development Index (*hdi*)

Corresponds to year 2003's Human Development Index in a borough, according to Mideplan and PNUD (2004). This variable is used as a proxy of a socioeconomic level, and according to economic theories of marriage it may be expected to positively affect marriage rates.

#### Rural (*rural*)

Dummy variable with a value of 1 for the rural boroughs according to 2002 Census<sup>121</sup> and a value of 0 for any other case. The presence of the State tends to be weaker in rural areas for, as an example, it is probable that people living in rural boroughs are further away from a Civil Registry office. Thus, this variable may be expected as having a negative effect over the marriage rate.

#### Labor female participation (*fem\_part*)

Borough variable corresponding to the percentage of female population that belongs to the working force (working or looking for a job) according to 2002 Census. On one hand, women that work have more capacity to maintain themselves economically, implying a lower need to marry. On

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<sup>120</sup> The former regional division of 13 regions instead of 15 was used, for the purposes of keeping data continuity.

<sup>121</sup> For the definition of rural Subdere (2004) was followed, see note 48.

the other hand, women that work have more income, which, following Becker, would increase marriage's value.

Percentage of women being atheist, agnostic or without a religion (*noreligion*)

Communal variable corresponding to the percentage of female population self-declared as atheist, agnostic or without a religion, according to the 1992 Census<sup>122</sup>. The expected effect is negative, for, in general, marriage is particularly important for religious women.

## Results

Figures No. 1 and 2 of the Annex show the results of the estimations for marriage rates and net marriage rates. According to the variables and the data here used, all the rest being constant, an increase of the total marriage rate of nearly 1.4 marriages for each thousand people per year may be attributed to the divorce law, and if second marriages are discounted, of nearly 1.2 marriages for each thousand inhabitants. These numbers, besides being robust to specification changes, are of an important magnitude, for in Chile the annual marriage rates don't even reach 4 marriages for each thousand inhabitants.

The trend variable, as to be expected, has a negative effect over marriages. The initial marriage rate results significant and with a positive sign, with which there would certainly be some inertia on the marriage rates. As expected by us, the fact that a borough is rural reduces the marriage rates, and even when the results are not always significant, the communal HDI increases it. Unemployment, on the other hand, has a negative effect over marriage rates, with which the negative economic shocks reduce the marriage rates. Regarding the rest of the controls, both labor female participation and the percentage of atheist, agnostics or without a religion women positively affect the marriage rates, which may be due, at least in part, to a high correlation of this variable with the socioeconomic level (which, at the same time, would explain, for example, why HDI loses relevance when the labor female participation is included).

The results of column 7 in both tables correspond to the estimations for the model using both fixed effects for the boroughs, being controlled by all observable and non-observable variables of the boroughs. In general terms, the results maintained: the effect of the law over the marriage rate continues to be significant at a 99% and its magnitude fell only slightly, reaching 1.3 and 1.15 marriages for each thousand inhabitants respectively.

Besides, with the purpose of assessing if there was a structural change after the 2004 law, the Chow test was ran, with its results indicating that with more than a 99.9% of confidence, the

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<sup>122</sup> In this case the 1992 Census instead of the 2002 Census was used, for it was considered a better predictor of the secularization level within a municipal district. In any case, specifications of the same data were tested for 2002 and with data of the total population and not only female, and the results scarcely changed.

hypothesis that the estimations pre and post 2004 may be generated by distributions with the same coefficients is rejected<sup>123</sup>.

As a conclusion, from this statistical analysis it may be stated that since the new Civil Marriage Law was enacted and until 2009, the marriages in Chile have increased in a relevant magnitude, not only because there was people who were able to remarry, but also because the existence of divorce has encouraged more marriages<sup>124</sup>.

Now then, it is true that it is not possible to dismiss that this increase may be due to another factor not considered by this analysis. Nonetheless, it does not seem easy to think in any phenomenon –besides the law- that may affect marriage in a positive and strong way and being subsequent to 2004.

In any case, it should be expected that the increase of marriage rates which is being attributable to the law will diminish through time, pursuant the decrease of the stock effect of people that until the enactment of the law couldn't or wouldn't marry because of the inexistence of divorce.

## **5.2. Effect of being a divorcee over the transferences from the ex-couple to the women**

Likewise, there should be a provision for the divorced women according to customary good and religiously approvable practice, as a duty upon the God-revering, pious.

(Koran, 2:241)

When a couple separates, two households must be maintained instead of one, with which the total life costs increase. In general, this is especially problematic for the woman, not only because she tends to have a lower capacity to produce income, but also because it is common that children, the youngest most of all, stay living with her and because she has, additionally, a lower chance to couple up again. In fact, of the total separated, divorcees or annulled people that are householders, living with their children and single, 84% are women<sup>125</sup>.

Plus, is it common that after the separation men quit maintaining their children with the life standard that they provided while married, something observed even among men of higher income<sup>126</sup>. For example, a study of the seventies and eighties in the United States found that after the first year after a divorce, women and underage children living with them in the home

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<sup>123</sup> For this the most complete specification for the case of the net marriage rate was used (column 6 of Table No. 2). With freedom degrees of 10 and 6.560, calculated statistical F was of 158.678, with which the hypothesis of the equivalence of coefficients is dismissed.

<sup>124</sup> The result is different to the found by Rasul (2003) for the United States case. Nonetheless, what Rasul analysis is the shift from a divorce law of mutual agreement to a unilateral one and not the change from not having to having a law allowing divorce.

<sup>125</sup> Personal estimations based on the 2009 CASEN.

<sup>126</sup> Weiss (1997), p. 113.

experienced an average fall of a 73% in their life standard, while their ex-husbands's increased in a 42%<sup>127</sup>.

In this context, it is no casualty that while from the total of Chilean homes, 33,7% has as head of the household a woman, among the poor households women as the head of the latter reach a 41.4% and among the indigent, a 47.8%. Even more, of the total of Chilean households below the poverty line<sup>128</sup> and whose householders are women, a 28.9% are separated, divorcees or annulled (respect to the adult female population reaching a 8%)<sup>129</sup>.

The previous data reveals that from an economic point of view is way harder for women to live without a couple and show, therefore, how relevant it is for women to regulate their situations after a breakup. A natural question then would be if the new Marriage Law has contributed to leave separated women in a better position once they divorce.

The Chilean law contemplates three main transference mechanisms from the ex-couple to the weakest party, which, as we have said, is usually the woman, and any of the three transferees depend on the income level of the ex-couple. First, there is an unwavering obligation of the parents to pay alimony<sup>130</sup> to their children until they're 21 years old or, if they study, until 28 (this may be longer even under certain conditions, such as an illness or physical incapacity)<sup>131</sup>. Although the transferees for alimony are not directly for the woman but for the children, they undoubtedly contribute to a better domestic situation of the woman who lives with her children and maintains the home.

Second, the Civil Code contemplates alimony among the spouses, which would apply in the case de facto separated couple continues married<sup>132</sup>.

Thirdly, in case of divorce, the new Marriage Law establishes an economic compensation for the spouse who, because of his/her dedication to home and children care, wasn't able to fully develop a paid activity during marriage (see section II). The compensations, along with alimony for children, are regulated in the same divorce judgment. In the immense majority of the cases, the economic compensation is for the woman; being sometimes paid in cash<sup>133</sup> and sometimes by timely payments<sup>134</sup>.

This way, seen from a legal point of view, all women living with children under a certain age would have the right to demand alimony from the children's father. On the other hand, women who are divorced have, over separated women, the advantage of being able to access economic

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<sup>127</sup> Weitzman 1985, p. xii. Data for the European Union also show an important decrease in the women's income after divorce, see Uunk (2004).

<sup>128</sup> Poor and indigent people.

<sup>129</sup> Estimations based on the 2009 CASEN.

<sup>130</sup> Alimony includes the obligation of providing primary and secondary education and learning some profession or craft. (See "Alimony for Minors" in [www.bcn.cl](http://www.bcn.cl)).

<sup>131</sup> Civil Code, Book I, Title 18, Articles 321-337; DFL 1, published on May 30<sup>th</sup>, 2000 in the Official Gazette, Ministry of Justice.

<sup>132</sup> Civil Code, Article 321.

<sup>133</sup> Cash payment often takes the form of "you keep the house".

<sup>134</sup> Corral (2009), pp. 85 and 87.

compensations, though they would lose the right to demand alimony that the separated women, still being legally married, have.

Nonetheless, in any of these cases, the difference between written law and facts may be important, whether because people do not know the law well, because they do not wish to file a demand or, just maybe, because the possibilities of enforcing the law are low. For example, only on 2009, JAC filed into Family Courts near to 18,000 cases for alimony<sup>135</sup>.

The hypothesis of this paper is that divorced women should receive more transferences, for them or for their children, than women that only are separated. This should be based in that alimony among spouses are less frequent and/or less enforced than economic compensation post-divorce and in the idea that a couple that has passed a divorce judgment has been forced to regulate their alimony and compensations and, therefore, has a greater knowledge of the law.

As seen in section IV.3, divorcees do not have the exact same characteristics that people with other marital statuses, for it is not enough to look the differences between the average transferences between groups, as they could be explained through variations in other variables. For this, we will use a regression analysis and will control for multiple variables.

To evaluate if divorced women receive more transferences by their ex couples than those who are only separated, estimations based in the 2009 CASEN survey were made. It is important to mention that, more than finding the “determinants” of the transferences, our purpose is to assess if being divorced makes any kind of impact over them.

Estimations explained below prove the work’s hypothesis, with which divorced women would be, from the perspective of the transferences made by the ex-couple, better-off than those who are just separated. This result indicates that the new Civil Marriage Law is fulfilling, at least in some way, the goal of protecting women, as the generally weakest spouse.

### **Group under analysis**

The group under analysis is that of head of the household women, living with at least one child and having a marital status of separated, divorcee or annulled, which corresponds to 3.431 cases in the sample.

Strictly speaking, according to the law, nothing indicates that only women can receive transferences from their ex-couples, but in the practice men qualify for it only under very peculiar situations and the cases are very rare<sup>136</sup>. Therefore, the behaviour of the transferences differs between men and women, for which it must be estimated separately. And, because as we just said, women represent the 84% if the people separated, divorced or annulled, head of the household and who are living with children and without a couple, and moreover, because women have less capacity of generating income, we shall follow the study of only this case.

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<sup>135</sup> Estimation based in JAC (2009).

<sup>136</sup> See, for example, Corral (2008) p.85 and JAC (2007).

On the other hand, these women live without couples, for those living with couples have been included in the category called “cohabitant or couple” and there is no way of finding out their marital status.

Unfortunately, there is no data on how long ago has a woman been separated nor of the duration of her relationship, which without doubts should strongly affect the received transferences. For example, it is reasonable to assume that a woman who has been married for twenty years and separated one year ago receives more transferences from her ex-husband than a woman who has been married for just one year, twenty years ago. Because we cannot control that effect, we have only considered women who live at least with one child, starting from the assumption that relationships where there are children have a longer average duration than those where there aren't, and assuming that living with a child is a proxy of not having been separated at least since the same amount of years that the youngest child's age. In any case, the results, when also considering separated women without children, do not change the signs or levels of significance, but only the magnitudes and in a reasonable way.

For these same motifs, we have only considered women who are heads of the household for, in other way, there is no way of knowing these women live with a couple and/or children, as the CASEN question is always related to the head of the household.

And besides, from a public policies point of view, it is precisely the separated women, with children and living without a couple, who worries us the most.

## **Dependent variables**

Ideally, we are interested in knowing how much women receive from their ex couples by title of alimony for their children and for themselves, and as economic compensations arising from divorce. Nonetheless, the lack of data obliges us to use some proxies, which, even when not perfect, are close.

The dependent variables were calculated from the questions *y12.1*: “On the last month, did you receive income because of alimony?” and the question *y12.2*: “On the last month, did you receive income on the title of money paid by distant relatives to the home and residing in the country?” In both cases, the questions do not specify who is the one paying the alimony or the transferences, for which we could be including transferences provided by relatives who are not the ex-couple, such as, for example, the parents. This is clearly a problem, even more when thinking that it is possible that when the ex-husband is not contributing to the home, other relatives such as parents and siblings may substitute him. Notwithstanding, there is no way of controlling for this.

### *Alimony per child (child\_alimony)*

In the first place, we shall just use alimony using the total of household's adjusted alimonies (*y meshaj* variable), divided by the number of children that the women head of the household has

living with her. A problem here is that we can't know if those children are of the women's ex-couple of whom she divorced or separated, but because there is no more available data, we will assume that it should be so, using this variable as a proxy. Besides, these alimonies may include alimonies between the spouses, not being exclusively for the children.

#### Per capita total transferences (*transfpc*)

In the second place, we use the household's total adjusted alimonies and transferences contributed to the home by distant relatives residing in the country (variables *yMeshaj* and *yfa1haj*), divided by the amount of children of the woman plus one, in order to include her. In this case, we also can't be sure that it is the ex-couple who makes the transference, for which it will also count as a proxy of the variable of interest. Opposed to the alimony variable, this would include transferences by title of economic compensation and other possible voluntary transferences from the ex-couple.

Though not presented in the tables, additional estimations show that when the dependent variable is the total of received alimonies or transferences, measured as a percentage of the home's autonomous income, the principal results maintain without important variations.

#### **Independent or control variables**

The included control variables are those presented below. It must be said that through the research multiple specifications were tested, including these and other variables, and the results were robust.

#### Divorce (*divorcee*)

Dummy variable with a value of 1 for those who have a marital status of divorcees and 0 for any other case, this is, in case they are separated or annulled. Under this work's hypothesis, it is expected to have a positive effect over any of the two dependent variables.

#### Youngest child's age (*youngestchildage*)

The age of the youngest child living with the mother. It is expected to have a negative effect on the transferences, for as younger as the children are, they require of more care and have less capacity of generating their own income, for which they are expected to receive more transferences. Besides, the younger the child is, less time ago the couple separated, for which a higher responsibility from the ex-couple towards its ex-wife should be expected.

### Rural (*rural*)

Dummy variable with a value of 1 for those living in rural areas<sup>137</sup> and of 0 for any other case. It should be expected for this variable to have a negative effect over the transferences, for, as the presence of the State is weaker in rural areas, the enforcement of the law also is.

### Education (*basic, secondary, upper secondary*)

Dummy variable with a value of 1 for those having complete basic, secondary and upper secondary educational levels, respectively. For, in general, couples tend to have similar educational levels, a higher educational level of the woman is probably related to a higher educational level of her ex-couple. Because education affects positively the capacity of generating income, it should be expected for this to have a positive effect over transferences, for they should depend on the income level, and in fact, the law dictates so. Plus, it should be expected that people with a higher educational level know the law better, and therefore, respect them in a greater way. Particularly, in the women's case, they may demand in a better way the transferences that correspond to them.

By the way, it is possible that different reached educational levels have effects of different magnitudes over the transferences. For example, based in the country's salaries structure, it may be expected that the upper secondary education had an especially important effect over the same.

### Age (*age*)

The estimations are controlled for the age of the woman. Here, the expected effects are not so clear for, on one hand, a higher age indicates a probability of having separated for a longer time<sup>138</sup> and, on the other, a higher age indicates a probability that the ex-couple is also older, possibly affecting in a positive way his ability of generating income. In various specifications age squared was also included to assess if age could have a non-linear effect, but this not always resulted significant.

### Nullity (*nullity*)

Dummy variable with a value of 1 for those having a marital status of annulled and of 0 for any other case. On one hand, nullity on incompetence of the Civil Registry clerk did not comprise economic compensations. Nonetheless, on the other, it demanded mutual agreement, giving a greater bargaining capacity to the weakest spouse, who may have demanded any kind of extra-contractual settlement, for which, in any case, there wouldn't have been any case of legal enforcement. Additionally, the new Civil Marriage Law ended the nullity on incompetence of the Civil Registry clerk, for which in 2009 annulled women will have at least 5 years since they

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<sup>137</sup> CASEN survey defines rural area as "concentrated or disperse set of houses with 1,000 inhabitants or less or between 1,001 and 2,000 inhabitants, with less of the 50% of its population economically active, dedicated to secondary and/or tertiary activities"

<sup>138</sup> This is because age to marriage is restricted from below and because the literature agrees that the duration of marriage negatively affects the probability of divorce. For the theory, see Becker *et al* (1977), for an empirical analysis of the Chilean case, see Sanhueza *et al* (2007).

separated, eventually affecting the transferences in a negative way. Taking everything into consideration, it is not clear which effect should supersede.

#### Communal Human Development Index (*hdi*)

Corresponding to the Human Development Index of the borough where the woman lives, according to Mideplan and PNUD (2004). This variable is used as a *proxy* of the woman's socioeconomic level, and because it tends to be correlated among couples, it is a proxy of the woman's ex couple socioeconomic level. The socioeconomic level is associated to a higher education and to a greater capacity of generating income, with which transferences should be expected to be higher. Plus, social pressure could have an effect by making people to act as people surrounding, and because of this a positive relation could be expected between the borough's HDI and the transferences.

#### Type of model and other methodological matters

The decision of the ex-husband on how much to contribute to his ex-wife is limited by zero, resulting in many cases in corner-solutions, where transferences are not made. That is how of the totality of the sample, only the 27.6% received any income for alimony and 33.9% for total transferences, implying that, with a high probability, the dependent variable will take a value of 0, making the point probability of an estimation to have positive density. This leads to biased and inconsistent OLS estimated parameters, for the effects of the independent variables over the dependent variable are forced to be linear, when they really aren't<sup>139</sup>. Plus, OLS will have predictions of negative values for the dependent, when actually that is not possible.

The standard solution to these problems is using a Tobit model, which assumes there is a latent variable not being restricted, and that the effective dependent variable will take as a value the maximum between the cap and the latent value<sup>140</sup>. In our case, the transferences are limited below by zero and the latent variable is the value of the transferences that the ex-couple would make if he weren't restricted by them having to be positive, for probably there are some men that, given their characteristics, would not only refrain making transferences, but would also want to charge transferences. We shall address the latent variable as *wanted* alimony or transferences.

To be able to use this model it is required to assume that errors distribute normally. In our case, this is an assumption that is not necessarily fulfilled, for because the variance of the transferences among individuals is expected to increase pursuant income increases, we would have a problem of heteroskedasticity, i.e. the error's variance is not constant. For this, it is

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<sup>139</sup> The change from an independent variable that makes switching from giving zero transferences to giving positive transferences is not linear.

<sup>140</sup> In other words,  $y_i^* = x_i\beta + \mu_i$        $\mu_i \sim N(0, \sigma^2)$   
 $y_i = \max(0, y_i^*)$

where  $y_i^*$  is the latent variable and  $y_i$  is the dependent observed variable.

convenient to use a logarithmic transformation, in order to approximate the distribution of errors to a normal one.

This is the reason estimations were made for both cases: for the alimony and the transferences either in pesos as in logarithms<sup>141</sup>. Those in pesos have the advantage of being in known magnitudes, but also have the heteroskedasticity problem implicating that Tobit estimations would be inconsistent. In any case, most part of the signs and significances are maintained in both estimations<sup>142</sup>.

Once the appropriate model is defined, it is important to clarify that it is possible for an endogeneity problem to arise in the estimations. For the case of the alimony per child, dependent variable we have that, by law, these are mandatory for every father, independently of his marital status, and so it should not affect the marital status. Nonetheless, if we go a step back, we have that the size of the alimony could somehow affect the decision of having children. And because the analysis of this work is centered only in women with children, this could generate a selection bias. The effect of having children over the probability of divorcing *given that she is already separated* is not clear, which makes hard to identify the direction of this potential bias. Besides, the data does not offer an appropriate variable to use as an instrument for the variables that could be affected by the fact of having children, such as the dummy of a woman being or not divorced or the age of the youngest child. In any case, it seems reasonable to think that the effect of alimony over the decision of having children is small, especially when considering that this decision presents a broad margin of error. This is how, after analyzing the results for the total transferences per capita, including women not having children, all signs and significance levels were maintained, and only the magnitudes changed and in a reasonable way, which would be an indication that this bias, if existent, does not alter substantially the results.

Regarding the dependent variable of total transferences per capita, which includes alimony, compensations given by the ex-husband to the divorced woman and other transferences that any ex-couple could provide his ex-wife. The marital state of the woman does affect the received transferences, for, as an example, only divorcees are entitled to economic compensation. The problem is that, at the same time, the existence of alimony among spouses and economic compensation in case of divorce could also, in a certain manner, affect the decision of the marital status, for, as an example, someone may decide to not marry precisely to not have to make transferences in case the marriage fails or someone could want to marry only to receive transferences in the same case. This way, we could be in the presence of endogeneity, for the dependent variable and some of the independent variables are mutually affected. The bias direction will depend on if we believe that transferences have a positive or negative effect over the probability of marrying -which is a condition to then divorce-, something that, in the last case, should depend

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<sup>141</sup> Because the logarithm of zero is an indefinite value, \$1 was added to the entire sample, which being irrelevant from an economic point of view, allows us to apply the transformation.

<sup>142</sup> To see more on the problem of results of corner solutions and the Tobit model, see Wooldridge (2006), chapter 16, or Greene (2002), chapter 22.

on who do we think takes the decision to marry, for the transferences should generate incentives to marriage with opposite senses between the one who thinks will be giving them and the one who thinks will be receiving them. In any case, we do not count with precise instruments for marital status.

Additionally, total transferences could also affect the ability for a woman to be head of a household, for she might be provided with the additional income that allows maintaining a home and not having to live with another relative or friend. As we are only considering this type of women, this introduces a new selection bias. In this case, it isn't either possible to identify the bias direction, for even it could be speculated that the transferences have a positive effect on the probability of being head of the household, this same effect over the probability of being divorced *given she is separated* is not clear. In any case, the problem is that we cannot also include women not being head of the household for, because the relations are only asked depending on the head of the household, we don't know with certainty if they are living with children and/or a couple, which hampers the analysis. This way, considering only heads of the household introduces a new selection bias, against which is hard enough to manage with because of the lack of instruments.

As a conclusion, it is possible that because of different mechanisms there is endogeneity, but little can we do to solve it. By the way, when dealing with problems of this kind, where so many variables intervene and there are so many interrelations, there will always be a certain degree of endogeneity and, even when the instrumental variables method may be used, scarcely would the solutions be perfect, for the instruments rarely are.

Lastly, all estimations were made applying the regional expansion factor (*expr*), which is estimated based on the 2002 Census and is adequate to make a national level analysis<sup>143-144</sup>.

## Results

Tables No. 3 to 6 show the results of the estimations of alimony in pesos and in logarithms, and for the total transferences in pesos and logarithms. In each case, the first and fourth columns show the found coefficients by Tobit's method for the latent variable, this is the *desired* total transferences, under two different specifications. The second and fifth column show the marginal effects of the different variables over the probability that the dependent variable is greater than 0 (in the cases of dummy variables, correspond to a discrete jump from 0 to 1). Lastly, the third and sixth

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<sup>143</sup> In any case, if the expansion factors are not used, the results of the estimations are maintained in their substance: the parameters maintain the signs and practically, all are significant up to a 99%. The principal difference is that, when using expansion factors, the significance of the estimated coefficients becomes even higher, for, by increasing the size of the sample, its standard deviation decreases. For more information on why using expansion factors, see Kott (2007).

<sup>144</sup> Other aspect to be considered is that CASEN survey does not use a simple probabilistic sample, but one that is stratified per compact clusters, which may generate problems due that the variances of the different variables may differ between clusters. Nonetheless, the survey's sample is so big that this problem is not relevant, for which it has been decided to ignore it. For more information on this, see Kreuter and Valliant (2007).

columns show the marginal effects of the independent variables over the dependents, conditional in alimony or transferences being strictly positive.

In general terms, the results have the expected signs, are significant on a 99% and are coherent and robust to specification changes (multiple other specifications were also tested, but not presented because of space issues). The results coincide with the hypothesis that living with children and divorced women head of the household receive more transferences from their ex-husbands in relation to women in the same situation that only separated.

In the case of alimony per child (Tables No. 3 and No. 4) it may be found that, *ceteris paribus*, the fact of being a divorcee, in relation to just being separated, increases the *desired* alimony in somewhat near to \$32,000 per child in the case of the peso estimations or, in relative terms, increases it in nearly 30 times, in the case of the logarithmic estimations<sup>145</sup>. Among separated women, the fact of being a divorcee increases the probability of receiving alimony in approximately a 9 or 10%. Given that alimony is received, *ceteris paribus*, being a divorcee may also have an effect of approximately \$8,000 in the alimony per child and, in percentage terms, in more than a 50%.

As expected, the age of the youngest child affects negatively the received alimony, with which it could be said separated fathers tend to fulfill more their alimony duties when the children are younger. Living in a rural area reduces alimony and education increases it. The woman's age affects negatively, possibly related to the fact that, as older as the person is, the more time has passed since the couple separated. The effect of being annulled over the alimony is negative, which could be due to the fact the annulled probably have been, in average, separated since a longest time. Finally, the HDI of a borough has effects of different signs on the pesos and logarithms estimations.

In the estimations of the total transferences per capita (Tables No. 5 and No.6), being a divorcee, in comparison to only being separated, *ceteris paribus*, would increase de *desired* transferences in somewhat \$29,000 or, in relative terms, in approximately 10 times. The probability of receiving transferences for divorcees would increase in 14 or 8%, depending on if the estimations are made in pesos or in logarithms. Given that transferences are received, being a divorcee would increase the amount in approximately \$85,000 or, in percentage terms, in more than 10%.

In general, the effects of the remaining variables maintain the sign they had for alimony, save for two exceptions. Secondary education in the estimation of logarithms ceased to be relevant, which is not relevant for the effect of education is still detected by the dummy of basic and complete upper secondary superior, and by the IDH variable. On the other hand, being annulled had a positive effect upon transferences, but considerably lower than the one for divorcees, implying that divorce is, from this perspective, a better solution for women than nullity.

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<sup>145</sup> On the correct interpretation of the *dummy* variables in semi-logarithmic estimations, see Halvorsen and Palmquist (1980).

Beyond the specific values of the estimations of different effects, the principal conclusion of this exercise is that, from an economical point of view, divorce protects substantially better, more than separation or nullity, women who have children and have been left on their own<sup>146</sup>. At the same time, the law would also protect children, not only because children's alimonies are received with higher probabilities and tend to be higher, but also because there is empirical evidence showing that income in hands of the mothers arrive in a greater way to their children than income in hands of the fathers (see, as an example, Lundberg, Pollak and Wales, 1996).

## 6. GENERAL CONCLUSIONS AND POLITICAL DISCUSSIONS

### 6.1. General Conclusions

The scarcity of data and the difficulty to difference the flow and stock effects, among other things, make difficult to completely understand the effects of the new Civil Marriage Law. Nonetheless, from the previous analysis, some preliminary conclusions have been made.

The new Civil Marriage Law has extended and made more equal the access to an official marriage break-up, *i.e.* with bond dissolution. It has extended it because the divorce rates are clearly above the nullity rates before 2004, and consequently, the amount of divorcees has already doubled the amount of annulled. It has made it more equal because, whether comparing boroughs of different socioeconomic levels or people of different levels of income and education, divorce is distributed more even than nullities. Thus, it could be said that the new Civil Marriage Law ended with the injustice of having a kind of divorce that was easier for some to access.

The approval of divorce, on the other hand, was followed by a relevant increase in the marriage rates, at the same time that no effects over the birth-rate neither over the percentage of extra-marital births were observed. This way, if considered that marriage is an institution that protects the family, at least from a numeric point of view, the fear that the possibility of divorce

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<sup>146</sup> If taken into consideration that among women that self-declare at separated there may be some that say so after the breakup of cohabitation and not of a marriage, then we may have that the group of divorcees may be different from the separated, not only because divorce was obtained, but also because *all of them* were once married. If the transferences received from the ex couple had a different behavior among cohabitation or marriage separated women, for example due to the fact that people that marry are more committed, which persists after a breakup, then part of the higher protection we are attributing to the fact of being a divorcee, actually may be due to the fact of having been ever married (or to the personal characteristics that lead people to want to marry).

Even when based in CASEN survey it is impossible to establish if a woman declares herself separated in relation to cohabitation and not to marriage, personal estimations based on the CASEN Panel Survey 1996-2006 indicate that up to a 15% of separated women fit in this category. With the purpose of assessing if the previous may be affecting our results, a series of estimations with the same described characteristics was made, but with more than ten different samples that took randomly just the 70% of the separated women (in the case the behavior of the transferences between cohabitation separated and divorce separated were too different, all results in the new samples should importantly vary). In all cases the general results were maintained, the coefficient of divorcees was positive and significant up to a 99% and the magnitude varied in a maximum of 10% in relation to the original results. In conclusion, even when a part of the effect of being a divorcee over the received transferences may be attributed to the fact of having being married, the results are sufficiently robust as for stating that *divorce* is in reality protecting women, on their own and in with children, in a better way than separation or nullity.

would weaken the family institution have been, at least until now, unjustified. Maybe Berger scored when proposing that the existence of marriage would not be a signal of the devaluation of marriage, but, on the contrary, would show that people value in such a way this institution that, if their particular marriage isn't on shape, they aren't able to cope with it.

We have also seen, from the analysis in section 5.2, that divorce is leaving separated and living with children women more protected, for divorcees would receive more alimony and transferences from their ex-couples than those that are only separated. This is very important, even more when considered that a women who has separated and has the sudden necessity to maintain, on its own, a whole household and her children, has also a high probability of lowering of life standards and, in occasions, even becoming poor. Furthermore, there is evidence indicating that, in general, while after a divorce the women and children's life standards decreases abruptly, the men's increase<sup>147</sup>, which concerns us even more because the income managed by the mothers tends to reach the children in a greater way than those managed by the fathers<sup>148</sup>. For the almost 30% of Chilean poor households having a separated, divorcee or annulled women head of the household, divorce can make a difference.

## **6.2. Policies' discussions**

The analysis of the data representing what divorce in Chile has been until now opens a gap for a series of questions on public policies. Without intending answering them, this section proposes some discussions around them.

The results of section 5.2 estimations suggest that it is relevant that all willing people may access a divorce when separated. The lower income groups have today access to divorce through the Judicial Assistance Corporations and the higher income groups have access because of their own resources, but the medium income groups may be unprotected in these matters<sup>149</sup>. Clearly, this is not a particular problem of divorce, but is framed in the more general problem of the middle class's access to justice. From the public policies point of view, the creation of a co-payment mechanism for those not qualifying for the JAC's services but neither able to pay a divorce could be assessed, something which, by the way, could also apply to other judicial processes which face the same problem and could generate social benefits.

In the same line, mechanisms to make simpler, quicker and less expensive the previous paperwork to divorce could be evaluated, thus accelerating the protection granted by divorce to the weakest party after it, and, at the same time, reducing the State's administrative expenses and easing the overhanging demand of the Family Courts. Such mechanisms should safeguard

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<sup>147</sup> Weitzman (1985), see p.60 of this work.

<sup>148</sup> For example see Lundberg, Pollak and Wales (1997).

<sup>149</sup> This problem may be decreased due to the reduction of attorney's hiring costs, generated by the rising offer of the same.

the protection to children and the weakest spouse and, therefore, should be especially adequate when mutual agreement concurs, when there are no children, or in general, when the topics to be regulated are less and less complex<sup>150</sup>. Now then, the simplification of the divorce process could also be reached through making more efficient the performance of the Family Courts, for not necessarily regulation changes are needed.

Additionally, and with a more general purpose, informative campaigns could be made for the population to know the details of the new Civil Marriage Law.

On the other hand, this could be the moment to rethink which are the most appropriate causes for divorce. I believe that regarding this, the principal aim should be to leave the weakest part of the conflict, which generally are women and certainly children, as protected as can be. Furthermore, there is abundant evidence that the separation of the parents is generally extremely painful for the children, affecting them in many aspects of their lives and, in many occasions, leaving indelible marks<sup>151</sup>. Naturally, the State's capacity to intervene in these subjects -as in any other related to the family- is not only very limited in the practice, but also, required of a not always easy justification. Nonetheless, the State must safeguard the "child's best interest"<sup>152</sup>, for the law can and must try to dim the adverse effects on minor children.

In this frame, and considering that all separated couples can access a divorce for cease of cohabitation after a certain period, the question on under what circumstances divorce by fault is justified appears. As an example, countries such as Germany, Spain and Sweden simply lack of divorce for this cause<sup>153</sup>.

As said before, evidence indicates that divorces by fault, because they demand a culprit, submit the couple –and children, indirectly- to a tough conflict in which an intimacy full of pain, resentment and revenge wishes had to be entered into. Children are surrounded by a tense and hostile environment and sometimes, they even have to declare against one of their parents<sup>154</sup>. But on the other side, in our law, marriage demands duties, and the legal acknowledgment of its default could have a sense of retributive justice, both practical as symbolical. Data shows that

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<sup>150</sup> A radical example of this is Portugal's case, where it is allowed that such as marriage, divorce may be carried on in the Civil Registry office without need of concurring to Court (See Union Europea, 2011). I think this is complicated in the case of divorce sued unilaterally, for it requires an impartial third party to decide among the both spouses -which escapes of the Civil Registry clerks' official role-, but may be studied for divorce on ground of cease of cohabitation with mutual agreement, pursuant the cease is accredited by any of the means the law demands for this purpose (Articles 22 and 25), specially if there aren't children and marriage has been short. Naturally, this could attach some risks, such as any of the parties not being properly informed and, because there isn't judge nor lawyer intervention, any of his/her rights might be violated such as, for example, the right to economic compensation; or that, if the negotiating capacity differs importantly among the spouses, the complete and sufficient agreement among them turns out being not entirely fair. To diminish these risks, some previous instance may be generated where the rights and duties of each party are explained and options for agreements are suggested, establishing somewhat a mandatory mediation. In conclusion, the alternative of carrying divorces under certain circumstance in the Civil Registry implies some risks, but also has some advantages, for which it may be studied.

<sup>151</sup> As an example, see Wallersten and Blakeslee (1985) or Beal and Hochman (1995).

<sup>152</sup> Article 3 of the Convention on the Rights of the Child, ratified by Chile in 1990.

<sup>153</sup> Unión Europea, 2011.

<sup>154</sup> More on divorce by fault in Weitzman (1985) and Tapia (2002).

there are very few cases of divorce by fault in Chile<sup>155</sup>, but when once considered the impact that such judicial process may have in a family, not because of it less relevant.

The first difference between the fault causes and the cease of cohabitation is the waiting time after the separation: cease of cohabitation demands one or three years, depending on whether there is mutual agreement or not, while fault demands no waiting time, though it demands a trial where fault is proven and, as we have seen before, these trials have less efficiency in court. In case the will to divorce is unilateral, to make a couple make time for the cause of cease of cohabitation which actually wants divorce for fault would have the effect of attributing a higher negotiating ability to the party not wanting divorce, which would be desirable only if such party coincides with the weakest. In the meantime, the risk of creating the possibility of manipulations appears, besides a high level of tension, which may affect children negatively.

The second difference between both causes is that if divorce is granted by fault, “the judge may deny the economic compensation that would have corresponded to the spouse who incurred in the cause, or prudentially decrease its amount” (Article 62). Nonetheless, the facts making the cause concur could be considered for the determination of the compensation’s amount, whichever the cause may be (though in that case, the unpleasant necessity of proving fault is also presented).

Taking these considerations into account, the facts that, according to law, make this cause concur could be reviewed. For example, in the case of infidelity or alcoholism<sup>156</sup>, divorce by fault could be a process so scandalous or painful that could make preferable for the correspondent spouse to simply wait for the necessary time to access a divorce for cease of cohabitation. But in other cases, such as domestic violence<sup>157</sup>, this kind of divorce may be required, for the offending spouse could, through violence, make impossible the cease of cohabitation that allows to access divorce for the other cause (in any case, domestic violence constitutes a crime itself, making the procedures contemplated by criminal law concur for these aspects).

Anyway, the problem on when divorce by fault is justified is extremely complex. Maybe, this discussion could be illustrated through studies on how traumatic divorce by fault results for the spouse and children, compared to the same in relation to cease of cohabitation, differencing of course between the diverse facts that make the fault concur.

From a more practical perspective, some matters related to the law’s performance may require attention. Occasionally unilateral divorces are carried out in absence of the demanded party, which difficult reaching a fair trade. Although it is true that the demanded party is legally notified of the suit, pursuant the Civil Procedure Code, it is possible that it may not approach the court for it does not properly understand what it is about or, for example, because it fears the judicial institutions. A cheap and simple solution is that, together with the legal notification, a

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<sup>155</sup> Divorces carried on by the JAC represent more than a 1%. There isn’t enough data on a country level.

<sup>156</sup> Correspond, respectively, to paragraphs 2 and 5 of article 54.

<sup>157</sup> Which would fit in paragraph 1 on Article 54.

letter prepared by the court's social assistant staff may be delivered, in which it is explained in simple terms the meaning of the courts findings and the possible consequences of not assisting the audiences. Furthermore, the option that the court's social assistance staff is appointed to call and properly explain the situation to the demanded parties may be assessed. This, of course, is not only a divorce's exclusive problem, and the suggested solution may be extended to other judicial processes.

Meanwhile, the economic compensation could be requested as a part of the mutually agreed conditions in the complete and sufficient agreement, in the case of the mutual agreement divorces, or in the defense brief, in case of the unilateral divorces. Notwithstanding, if not requested in the correspondent process stage, there are no other opportunities for its request, for it is not possible to demand compensation in the first audience of the procedure<sup>158</sup>. This generates a problem, for many people ignore the procedure or economic compensation and, therefore may without noticing, lose their opportunity to exercise their right to request compensation. To avoid this, it could be allowed in the first audience, at the moment of being informed on economic compensation, to request the compensation orally, with the possibility of suspending the audience if needed for a new day and hour, only once and upon request of party, with the purpose of collecting the evidence to be exhibited.

Another relevant question that arises after this work's data analysis is how to make the law actually apply in alimony matters: among households where its head are separated, divorced or annulled women, living without a couple and with underage children, less than a 40% receives any alimony income, something which increases only slightly (to a 44.5%) in households where, as proxy of a high socioeconomic level, the mother has a complete upper secondary education<sup>159</sup>. Pursuant the payment of alimony as establish by the law is not complied, little will the DNA tests and progress in filiation law matters be of any use.

On one hand, it is necessary to seek for intelligent mechanisms to, once the moment of the alimony's establishment has come, disclose the alimony-providing party's real income. Maybe this also requires a greater and better control. On the other hand, it is necessary to seek for mechanisms to enforce the payment of the established alimony. This issue is especially delicate, for some enforcement measures, such as arrest, may be too painful for children, making the medicine worse than the disease<sup>160</sup>. Because of this, it sometimes happens that who may claim the compliment of the maintenance obligation –normally the one with the child's parental responsibility- prefers to avoid following the necessary procedures, generating a vicious circle for the alimony-providing parent, being conscious of this, will have even less incentives to comply with its obligations. Because of this problem, the possibility of creating a

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<sup>158</sup> The so-called "preparation hearing"

<sup>159</sup> Personal estimations based on the 2009 CASEN.

<sup>160</sup> They could end by, for example, leading the maintenance-debtor father to loose its work, being counterproductive.

public entity authorized to claim the fulfillment of alimony obligations could be assessed, somehow a kind of Prosecution bureau operating as plaintiff in these cases.

A similar problem is presented in case of the economic compensation's payment, which possibly, also affects the children both economic and emotionally. A specific proposal in this case is that the judge, always according to the law's establishment on how compensation is determined (Article 62), may order an automatic discount in the retirement pension of the compensating spouse, in favor of the other.

Simultaneously to the review of the mechanisms to strengthen the compliment of such obligations, it is necessary to review the children's custody and visit regime<sup>161</sup>. Psychology has showed us on the importance of both parents actual presence in the formation of people, for contributing with economic resources is not good enough. The problem is complex, for, besides being parents who simply are not willing to carry out their duties as such, it is usual to use children as means of exchange to achieve other things, to limit visits as revenge or trying to put children against the other parent, among other things. And by the way, all of this affects children, making the process even harder. Nonetheless, we must have to have in mind that the law's ability to "solve" these problems is clearly limited and that legislating on the matter carries the risk of trespassing people's legitimate autonomy. Besides, because in family matters a large list of factors is involved, the differences between the same are especially relevant, for every case should be analyzed in its particular nature (as Tolstoy would say, "every unhappy family is unhappy in its own way").

Whether in aspects of how to comply with the payment of alimony and economic compensation as in subjects of children care and visits, I think it would be recommendable to study the international experience and adopt the measures that have given results.

To end, we should ask ourselves why Chileans marry much less than the developed countries and, therefore, why they have such high extra marital cohabitation and extramarital newborn rates. It is possible that there are cultural factors involved, which would explain that in other Latin-American countries the situation is similar, but it is also possible that there is an incentives problem. From the point of view of the society, marriage is good because spouses have rights that they wouldn't have if they weren't married, such as a common assets and inheritance, and because the weakest spouse is legally more protected when facing a breakup<sup>162</sup>. Because of this, it is relevant to analyze the causes that make marriage so uncommon in the country, and in the case the motifs are related to an incentives problem, as for example housing subsidies, changes could be made to avoid discouraging that cohabiting

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<sup>161</sup> Strictly speaking, the law talks about personal care and direct and regular relationship, but is commonly addressed as child custody and visits, respectively.

<sup>162</sup> There is vast empirical literature suggesting that marriage would have a series of other benefits, among which would be increasing the health, wealth and general wellbeing level. For a compilation on these results, see Waite and Gallagher (2001). Nonetheless the topic is highly complex, partly because there is a strong selection bias making possible that all those results are due to the fact that "healthier, wealthier and happier" people decide to marry. See, for example, Stutzer and Frey (2003).

couples marry, and therefore leaving the weakest part of the couple more protected regarding a potential separation<sup>163</sup>.

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<sup>163</sup> Alternatively, a mechanism different to marriage may be generated, one that produces similar effects regarding the couple's mutual protection, which may fit in the discussed Agreement on Common Life. Notwithstanding, care must be taken in, by establishing two categories of State acknowledgement to couples, leading to an unnecessary increase of the law's complexity. See Sierra (2010).

## ANNEX

Table No. 1: 1990-2009 Marriage rate

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7) Fixed Effects
trend	-0.346*** (0.0270)	-0.339*** (0.0261)	-0.347*** (0.0270)	-0.346*** (0.0271)	-0.346*** (0.0270)	-0.338*** (0.0261)	-0.333*** (0.0247)
law	1.427*** (0.272)	1.380*** (0.265)	1.428*** (0.272)	1.427*** (0.272)	1.428*** (0.272)	1.376*** (0.265)	1.324*** (0.305)
pc_20a49	-2.214 (1.851)	-2.517 (1.832)	-2.388 (1.851)	-2.959 (1.907)	-2.641 (1.843)	-3.546* (1.855)	8.199 (10.88)
initial_mar	0.298*** (0.0801)	0.298*** (0.0801)	0.298*** (0.0801)	0.297*** (0.0803)	0.298*** (0.0801)	0.297*** (0.0803)	
hdi	3.152*** (0.628)	3.442*** (0.633)	2.707*** (0.679)	0.394 (0.717)	3.056*** (0.623)	1.121 (0.766)	
rural	-0.413*** (0.0784)	-0.439*** (0.0804)	-0.393*** (0.0756)	-0.363*** (0.0742)	-0.389*** (0.0795)	-0.377*** (0.0763)	
unemployment		-4.414** (2.173)				-4.770** (2.280)	-10.91** (5.324)
population			9.40e-07*** (3.59e-07)			1.82e-07 (4.05e-07)	-1.16e-06 (6.36e-06)
fem_part				3.585*** (0.949)		2.825** (1.113)	
noreligion					3.661*** (1.016)	3.300** (1.293)	
Constant	11.54*** (0.899)	11.56*** (0.902)	11.88*** (0.948)	13.24*** (1.094)	11.67*** (0.890)	13.10*** (1.107)	11.77** (4.742)
Observations	6,580	6,580	6,580	6,580	6,580	6,580	6,624
R-squared	0.410	0.410	0.410	0.410	0.410	0.410	0.419

Robust standard errors in parentheses

\*\*\* p&lt;0.01, \*\* p&lt;0.05, \* p&lt;0.1

**Table No. 2: 1990-2009 Net marriage rate**

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7) Fixed Effects
trend	-0.351*** (0.0270)	-0.343*** (0.0261)	-0.351*** (0.0270)	-0.350*** (0.0271)	-0.350*** (0.0270)	-0.343*** (0.0261)	-0.339*** (0.0247)
law	1.243*** (0.271)	1.198*** (0.265)	1.243*** (0.271)	1.242*** (0.271)	1.243*** (0.271)	1.194*** (0.264)	1.148*** (0.305)
pc_20a49	-2.223 (1.858)	-2.509 (1.841)	-2.417 (1.857)	-3.007 (1.911)	-2.640 (1.850)	-3.549* (1.861)	10.23 (10.88)
initial_mar	0.297*** (0.0802)	0.298*** (0.0801)	0.298*** (0.0801)	0.296*** (0.0803)	0.298*** (0.0802)	0.297*** (0.0804)	
hdi	2.859*** (0.618)	3.135*** (0.623)	2.361*** (0.667)	-0.0452 (0.709)	2.766*** (0.613)	0.637 (0.759)	
rural	-0.389*** (0.0783)	-0.414*** (0.0802)	-0.366*** (0.0754)	-0.337*** (0.0740)	-0.366*** (0.0793)	-0.349*** (0.0761)	
unemployment		-4.178* (2.171)				-4.491** (2.278)	-10.31* (5.324)
population			1.05e-06*** (3.53e-07)			2.75e-07 (3.95e-07)	-9.86e-07 (6.36e-06)
fem_part				3.777*** (0.946)		3.006*** (1.108)	
noreligion					3.581*** (1.007)	2.947** (1.285)	
Constant	11.86*** (0.903)	11.88*** (0.906)	12.24*** (0.951)	13.66*** (1.099)	11.99*** (0.894)	13.52*** (1.113)	11.00** (4.742)
Observations	6,580	6,580	6,580	6,580	6,580	6,580	6,624
R-squared	0.411	0.411	0.411	0.411	0.411	0.411	0.419

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**Table No.3: Alimony per child (in Chilean pesos)**  
**Tobit Model**

VARIABLES	(1) Alimony*	(2) Prob P>0	(3) Mg. Ef. / T>0	(4) Alimony*	(5) Prob P>0	(6) Mg. Ef. / T>0
divorcee	32,904*** (835.1)	0.106*** (0.00250)	8,631*** (202.4)	31,807*** (840.6)	0.102*** (0.00251)	8,309*** (203.5)
youngestchildage	-2,331*** (44.60)	-0.00699*** (0.000134)	-564.9*** (10.81)	-2,290*** (45.12)	-0.00684*** (0.000135)	-554.2*** (10.92)
rural	-22,148*** (1,106)	-0.0621*** (0.00331)	-5,084*** (268.0)	-21,425*** (1,128)	-0.0601*** (0.00337)	-4,922*** (272.9)
basic	16,319*** (800.2)	0.0473*** (0.00240)	3,844*** (193.9)	15,312*** (807.5)	0.0444*** (0.00241)	3,610*** (195.5)
secondary	6,770*** (615.9)	0.0203*** (0.00185)	1,640*** (149.2)	7,719*** (629.9)	0.0231*** (0.00188)	1,868*** (152.5)
upper secondary	39,822*** (743.3)	0.129*** (0.00223)	10,507*** (180.1)	39,955*** (756.8)	0.129*** (0.00226)	10,531*** (183.2)
age	-862.8*** (43.73)	-0.00259*** (0.000131)	-209.1*** (10.60)	-875.9*** (44.21)	-0.00262*** (0.000132)	-212.0*** (10.70)
hdi				24,968*** (4,704)	0.0746*** (0.0141)	6,043*** (1,139)
annulled				-28,177*** (1,694)	-0.0768*** (0.00506)	-6,337*** (410.1)
_se	106,380*** (296.4)			106,499*** (299.5)		
Constant	-10,862*** (1,745)	-0.0325*** (0.00523)	-2,632*** (422.9)	-28,330*** (3,709)	-0.0847*** (0.0111)	-6,857*** (897.8)
Observations	305,397	305,397	305,397	300,827	300,827	300,827

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**Table No. 4: Alimony per child (in logarithms)**  
**Tobit Model**

VARIABLES	(1) Ln.Alimony*	(2) Prob P>0	(3) Mg. Ef. / T>0	(4) Ln.Alimony*	(5) Prob P>0	(6) Mg. Ef. / T>0
divorcee	3.444*** (0.102)	0.0945*** (0.00264)	0.945*** (0.0261)	3.354*** (0.102)	0.0918*** (0.00265)	0.917*** (0.0262)
youngestchildage	-0.335*** (0.00539)	- 0.00870*** (0.000140)	-0.0858*** (0.00138)	-0.328*** (0.00545)	- 0.00850*** (0.000141)	-0.0839*** (0.00139)
rural	-2.180*** (0.131)	-0.0541*** (0.00341)	-0.535*** (0.0336)	-2.583*** (0.134)	-0.0634*** (0.00347)	-0.628*** (0.0342)
basic	2.121*** (0.0955)	0.0534*** (0.00248)	0.528*** (0.0245)	2.161*** (0.0963)	0.0543*** (0.00250)	0.536*** (0.0246)
secondary	0.230*** (0.0739)	0.00598*** (0.00192)	0.0590*** (0.0189)	0.611*** (0.0755)	0.0158*** (0.00196)	0.156*** (0.0193)
upper secondary	2.223*** (0.0913)	0.0597*** (0.00237)	0.592*** (0.0234)	2.325*** (0.0929)	0.0624*** (0.00241)	0.619*** (0.0238)
age	-0.145*** (0.00527)	- 0.00376*** (0.000137)	-0.0371*** (0.00135)	-0.140*** (0.00532)	- 0.00362*** (0.000138)	-0.0357*** (0.00136)
hdi				-10.80*** (0.576)	-0.280*** (0.0149)	-2.764*** (0.147)
annulled				-3.058*** (0.205)	-0.0738*** (0.00532)	-0.733*** (0.0525)
_se	13.01*** (0.0384)			13.01*** (0.0387)		
Constant	3.248*** (0.210)	0.0844*** (0.00546)	0.833*** (0.0539)	10.70*** (0.453)	0.277*** (0.0118)	2.737*** (0.116)
Observations	305,397	305,397	305,397	300,827	300,827	300,827

Standard errors in parentheses  
\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**Table No. 5: Transferences (in Chilean pesos)  
Tobit Model**

VARIABLES	(1) Transferences*	(2) Prob T>0	(3) Mg. Ef. / T>0	(4) Transferences*	(5) Prob T>0	(6) Mg. Ef. / T>0
divorcee	29,106*** (575.4)	0.143*** (0.00265)	8,594*** (153.9)	29,328*** (578.4)	0.144*** (0.00266)	8,653*** (154.5)
youngestchildage	-1,549***	-	-414.4***	-1,598***	-	-426.8***
		0.00714*** (0.000138)			0.00736*** (0.000140)	
rural	(29.93) -16,592*** (751.5)	-0.0725*** (0.00347)	(8.007) -4,192*** (201.0)	(30.30) -13,463*** (765.3)	-0.0594*** (0.00353)	(8.095) -3,433*** (204.4)
basic	11,388*** (537.8)	0.0512*** (0.00248)	2,963*** (143.9)	9,364*** (542.7)	0.0423*** (0.00250)	2,445*** (145.0)
secondary	6,026*** (420.7)	0.0278*** (0.00194)	1,612*** (112.5)	5,114*** (430.5)	0.0236*** (0.00198)	1,366*** (115.0)
upper secondary	37,583*** (507.8)	0.185*** (0.00234)	11,263*** (135.8)	35,883*** (515.2)	0.176*** (0.00237)	10,682*** (137.6)
age	-563.4***	-	-150.7***	-582.5***	-	-155.6***
		0.00260*** (0.000137)			0.00268*** (0.000138)	
hdi			(7.946)	(30.06) 81,312*** (3,126)	0.375*** (0.0144)	(8.029) 21,722*** (835.1)
annulled				8,288*** (1,014)	0.0391*** (0.00467)	2,284*** (271.0)
_se	76,119*** (186.4)			76,097*** (188.1)		
Constant	-2,055* (1,185)	-0.00947* (0.00546)	-549.6* (316.9)	-58,308*** (2,467)	-0.269*** (0.0114)	- 15,576*** (659.0)
Observations	305,397	305,397	305,397	300,827	300,827	300,827

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**Table No. 6: Transferences (in logarithms)  
Tobit Model**

VARIABLES	(1) Ln. Transferences*	(2) Prob T>0	(3) Mg. Ef. / T>0	(4) Ln. Transferences*	(5) Prob T>0	(6) Mg. Ef. / T>0
divorcee	2.409*** (0.0864)	0.0811*** (0.00283)	0.746*** (0.0254)	2.498*** (0.0870)	0.0840*** (0.00285)	0.774*** (0.0255)
youngestchildage	-0.280*** (0.00441)	-	-	-0.286*** (0.00446)	-	-
rural	-1.994*** (0.109)	0.00919*** (0.000145)	0.0822*** (0.00129)	-1.996*** (0.111)	0.00938*** (0.000146)	0.0839*** (0.00131)
basic	1.692*** (0.0780)	-0.0634*** (0.00357)	-0.559*** (0.0319)	1.545*** (0.0788)	-0.0633*** (0.00363)	-0.558*** (0.0325)
secondary	-0.0687 (0.0617)	0.0545*** (0.00256)	0.483*** (0.0229)	1.545*** (0.0678)	0.0498*** (0.00258)	0.441*** (0.0231)
upper secondary	-0.0687 (0.0617)	-0.00225 (0.00202)	-0.0202 (0.0181)	0.0678 (0.0632)	0.00222 (0.00207)	0.0199 (0.0185)
age	2.955*** (0.0763)	0.0995*** (0.00250)	0.919*** (0.0224)	2.780*** (0.0774)	0.0934*** (0.00254)	0.860*** (0.0227)
hdi	-0.114*** (0.00437)	-	-	-0.110*** (0.00442)	-	-
annulled		0.00372*** (0.000143)	0.0333*** (0.00128)		0.00360*** (0.000145)	0.0322*** (0.00129)
_se						
Constant	11.42*** (0.0300)			11.43*** (0.0303)		
	4.692*** (0.174)	0.154*** (0.00571)	1.377*** (0.0511)	5.345*** (0.367)	0.175*** (0.0120)	1.565*** (0.108)
Observations	305,397	305,397	305,397	300,827	300,827	300,827

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

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